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**IMPACT OF FEDERAL REGULATIONS: A CASE
STUDY OF RECENTLY ISSUED RULES**

HEARING

BEFORE THE

**COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
ONE HUNDRED FOURTEENTH CONGRESS**

FIRST SESSION

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C O N T E N T S

Opening statements: Senator Johnson	Page 1
--	-----------

WITNESS

FRIDAY, NOVEMBER 13, 2015

Delanie M. Breuer, Assistant Deputy Attorney General, Wisconsin Department of Justice	4
Lucas Vebber, Director of Environmental and Energy Policy, Wisconsin Manufacturers and Commerce	6
Jim Holte, President, Wisconsin Farm Bureau Federation	8
Henry Schienebeck, Executive Director, Great Lakes Timber Professionals Association	10
Bruce Ramme, Ph.D., Vice President, Environmental, WEC Energy Group	11
George Meyer, Executive Director, Wisconsin Wildlife Federation	13

ALPHABETICAL LIST OF WITNESSES

Breuer, Delanie M.: Testimony	4
Prepared statement	33
Holte, Jim: Testimony	8
Prepared statement with attachments	49
Meyer, George: Testimony	13
Prepared statement	106
Ramme, Bruce: Testimony	11
Prepared statement	99
Schienebeck, Henry: Testimony	10
Prepared statement	96
Vebber, Lucas: Testimony	6
Prepared statement	40

APPENDIX

Statements submitted for the Record from: Environment Protection Agency	110
Wisconsin Electric Cooperative Association	117

THE IMPACT OF FEDERAL REGULATIONS: A CASE STUDY OF RECENTLY ISSUED RULES

FRIDAY, NOVEMBER 13, 2015

**U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
*Washington, DC.***

The Committee met, pursuant to notice, at 1:02 p.m., in 230 Laird Rood, Dreyfus University Center, 1015 Reserve Street, Stevens Point, Wisconsin, Hon. Ron Johnson, Chairman of the Committee, presiding.

Present: Senators Johnson.

Senator JOHNSON. This hearing of the Senate Committee on Homeland Security and Governmental Affairs will come to order. I want to welcome everybody here.

Before we begin, I would like to ask everyone to rise as we welcome the UW-Stevens Point Army ROTC Color Guard to post the colors.

Member of UW-Stevens Point Army ROTC Color Guard. Center face. Post colors. Present arms. Order arms. Center face. Forward march.

Senator JOHNSON. Please be seated.

OPENING STATEMENT OF CHAIRMAN JOHNSON

Senator JOHNSON. I would like to thank Cadet Jordan Stuart, Cadet Kaitlyn Friebel, Cadet Ryan Dombeck, and Cadet Juan Patino for posting the colors.

I also want to thank everybody for attending this hearing here today.

The title of the hearing is The Impact of Federal Regulations: A Case Study of Recently Issued Rules.

Let me talk a little bit about this committee, the Senate Committee on Homeland Security and Governmental Affairs. It is really two committees from the House combined into one in the Senate. You have the Homeland Security part of the committee, and you have the Governmental Affairs.

And the Governmental Affairs part of the committee is a very broad jurisdiction of oversight over pretty much the entire Federal Government. That is really kind of on that side of the committee here today, a broad jurisdictional oversight.

When I became Chairman, coming from a business background, I have done a lot of strategic planning. And one thing I definitely realized was very helpful in any business setting was developing a mission and vision statement. And so I went to our Former Chair-

man, now our Ranking Member, Senator Tom Carper, of Delaware, a person, I think, of real integrity. And I said, let us develop a mission statement for our committee, and so we did. And it is pretty simple: To enhance the economic and national security of America.

And so from my standpoint, this hearing, this jurisdictional hearing, over regulations and the effect on our economy really falls under that, enhancing the economic security of this country.

We are going to be talking about regulations, primarily focusing on the Environmental Protection Agency (EPA), which I would like to start with a quick question of the members of the panel and the audience. Does anybody here know anybody that does not want a clean environment?

I did not think I would see any hands raised.

It is true. We all want a clean environment, something we all value, particularly here in the State of Wisconsin. We have hundreds—I am personally a fisherman. I get my water out of a well. It is a goal of all of ours to keep our environment clean. We really value that. And that is a good thing.

Now, the EPA obviously was established on December 2, 1970, to maintain a clean environment in America. And if you really think back to that—I am old enough. I was actually living in those times. On June 22, 1969, the Cuyahoga River in Cleveland actually set fire. We had some real problems with the environment back in the late 1960s, early 1970s. And so the EPA then made a bipartisan effort to address those abuses. We have come a long way.

I would like to just point out the success of the EPA. It was really targeting five primarily pollutants at the time:

Carbon monoxide. Again, the establishment of EPA in 1970, carbon monoxide has gone from 204 million tons to 68. That is a 67 percent drop.

Nitrogen oxides. From 27 million tons to 12 million tons. That is a 54 percent drop.

Soot. From 12 million tons to 2.6 million tons. That is a 79 percent drop.

Sulfur dioxide. From 31 million tons to 5 million tons. That is an 84 percent reduction.

And volatile organic compounds (VOCs), from 35 million tons to 17 million tons. That is a 51 percent drop.

Now, all this occurred as our population went from 203 million to about 320 million today. That is about a 56 percent increase. So we have done a pretty good job. We have come a long way. And again, it is a goal, maintaining a clean environment, cleaning up even further, that we all really agree to.

I think the purpose of this hearing, though, is to talk about—and, really, the underlying concept is the law of emission returns. We have to evaluate any further action, further reductions. What is the benefit of those reductions in pollution versus what is the cost to society? We always have limits in terms of resources.

An example from my own manufacturing background of the law of emission returns is I extruded clear plastic sheet. And sometimes we were called to do jobs that had colors. Now, we would go from clear to a color with a very small percent of color concentrate. But if we wanted to move toward greater and greater opacity, it

would require greater and greater amounts of color concentrate to the point where you just were not getting much benefit even though those colors concentrates were expensive and you were having to put an awful lot in there. And I am sure you can all really kind of relate to similar types of examples in your own lives and your own background.

So that is really what we are talking about, just a common sense concept of let us take a look at any further regulations as it relates to cleaning up our environment. What is the benefit, the dollar benefit, the total cost? It is just really a common sense approach.

I certainly want to use information as much as possible. Now, one of the things I found in this debate on the environment and regulations is solid information is kind of hard to come by. A lot of these things are projecting into the future. We do not have perfect information. It is just hard. As an accountant, I like solid numbers, solid information that everybody can agree on. And that is difficult to get.

But one of the ways I think you can get solid information is to put things in perspective. I did not see anything in the testimony—

By the way, I appreciate all of your testimony. I read it all.

I did not see anybody talk about the most recently proposed ozone rule. So I would like to talk a little bit about that. To kind of put things in perspective, in 1997, the allowed parts per billion of the ozone in the atmosphere was 80, 80 parts per billion. And so the EPA initiated regulations to drop that to 75 parts per billion, which I think, by and large, we have accomplished that. I cannot really tell you how much that cost. I think it is very difficult to figure out exactly how much going from 80 to 75 billion parts per—80 to 75 parts per billion of the ozone—what that cost. But now the EPA has just issued some new regulations to take that from 75 to 70.

Let me create an analogy of what we are talking about. Because that sounds pretty good, going from 80 to 75. That is 5 parts per billion. Now it is 75 to 70. That's a 6.7 percent decrease. But here's what it really is. Assume an Olympic size pool. That's 660,000 gallons of water. 660,000 gallons. 75 parts per billion is 38 teaspoons. Dropping that to 70 parts per billion would drop it to 35 and a half teaspoons. And so, again, the question would be, is it worth, in a 660,000-gallon pool that has 38 teaspoons of pollutant—how much are we willing to spend to drop that down to 35 and a half teaspoons? Now, it's all relative. It depends on how nasty that pollutant is. If it's just sand, it's probably not worth anything. If it's something incredibly nasty, it might be worth a fair amount. Again, I just want to kind of put things in perspective.

I think I probably said enough in my opening statement. So what I would like to do—

Do we have a list of the order of witnesses? OK.

It is a tradition of this committee to swear in the witnesses. So if everybody will stand and raise your right hand—

Do you solemnly swear that the testimony you will give before this committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

All Witnesses. I do.

Senator Johnson. Please be seated.

So our first witness will be Delanie Breuer. Ms. Breuer is the Assistant Deputy Attorney General (AG) for the Wisconsin Department of Justice. She has previously worked for the Wisconsin Public Service Commission (PSC), providing counsel on legal and policy management relating to utility regulation cases. Ms. Breuer.

TESTIMONY OF DELANIE M. BREUER,¹ ASSISTANT DEPUTY ATTORNEY GENERAL, WISCONSIN DEPARTMENT OF JUSTICE

Ms. BREUER. Good afternoon. Thanks to the University for hosting us, and thank you, Senator Johnson, for having this hearing and giving me the opportunity to provide testimony on behalf of Attorney General Brad Schimel and the State of Wisconsin.

The health of Wisconsin's economy rests on the back of manufacturing, food processing, pulp and paper, and agriculture. Together, these industries make up the heart of our State, and all of them are in danger due to the EPA's attempt to control our natural resources.

Environmental stewardship is important to all of us, but in order to leave our future generations better off, we have to find the balance between protecting our environment and protecting our economy.

Over the last 7 years, the EPA has hammered businesses with regulations at a historic pace, but the Waters of the United States rule and the Clean Power Plan (CPP), in particular, are the broadest expansion of EPA authority to date. One gives EPA the authority to regulate almost every pond and puddle, and the other allows the EPA to manipulate the entire electric grid. The industries important to Wisconsin's economy might not survive this onslaught.

The Waters of the United States rule (WOTUS), is an attempt by the EPA to control more bodies of water with Federal regulation. Practically speaking, the types of waters now subject to EPA regulation include ditches, ponds with no connectivity to navigable waters, streams that only flow after heavy rains, and the hundred-year floodplain, which is dry 99 years out of a hundred.

WOTUS particularly impacts agriculture. The rule adds more red tape and barriers to practical land use here in Wisconsin.

Under General Schimel, Wisconsin has joined the fight against this Federal regulatory overreach. Currently the WOTUS rule is stayed pending litigation. A reversal of that stay will irreparably harm Wisconsin and many other States. Wisconsin will continue to support that litigation effort.

The Clean Power Plan is the centerpiece of the Obama Administration's intended environmental legacy, but the repercussions of this will devastate Wisconsin's economy for little or no benefit. At its core, the Clean Power Plan is a cap-and-trade plan in disguise, the same type of program promised by President Obama during his campaign and rejected by Congress.

In simple terms, the CPP is designed to end coal-fired generation. The devastating impact of this cannot be overstated as it applies to Wisconsin manufacturing. Wisconsin is in the crosshairs of this rule in a way unlike many other States. We have a manufac-

¹The prepared statement of Ms. Breuer appears in the Appendix on page 33.

turing-based economy, and we have low renewable potential we currently rely on clean, reliable coal plants.

Since 2000, we have invested \$11.6 billion in reducing carbon in the utility sector alone. But still, we are expected to make one of the largest reductions of any State under this final rule.

Currently, Wisconsin and 25 other States are seeking a stay of this illegal rule. If we do not get that stay, we have no choice but to begin making huge investments for compliance. Much like the recently litigated MATS rule, the EPA is happy to just force us to make those unnecessary investments, even if the rule is ultimately determined to be illegal.

So the great irony of this rule is the impact. At best, it will be minimal. And at worst, it will do exactly the opposite of what the EPA claims to want. By its own calculation, the impact of this rule over the next several decades is so minimal it is practically insignificant. But if we consider the very real consequences of price spikes in electric and gas prices, it is more likely that global emissions will actually increase as a result of the rule. Energy price spikes will reduce manufacturers' margins to a point that they will be forced to relocate. And when they relocate, they are not relocating to the neighboring State. They are relocating to a different country, a country like China or India or Mexico where cheap, reliable coal energy is plentiful and where the very toxic emissions like mercury and SO₂ are not controlled at all. Those countries will continue increasing their carbon emissions as well as their economies, and our economy will suffer. Those decisions to move overseas are not easily reversed. And if this rule is not stayed while it is being litigated, those decisions will be imminent.

Now, many citizens do not understand the impact of these rules. Consumers will pay more for goods and energies, but that may be a few years down the line. Jobs will move out of the State and out of the country. And ultimately, global pollution could actually increase. The consumers will not blame the EPA. They will blame manufacturers, they will blame utilities, and they will blame farmers.

Now, many Wisconsin companies are making the effort on their own to protect the environment. The air and the water in Wisconsin is cleaner than it has ever been, and that was all accomplished without the illegal intervention of the Federal government.

There has been a lot of rhetoric thrown around about these EPA regulations. The impact of the rules on our economy—it is not being exaggerated—it will be detrimental and it will be irreversible. These two regulations will result in a regulatory power grab by the Federal Government like we have never seen.

Senator Johnson. Thank you, Ms. Breuer.

Our next witness is Lucas Vebber. He is the Director of Environmental & Energy Policy at Wisconsin Manufacturers & Commerce. Mr. Vebber.

TESTIMONY OF LUCAS VEBBER,¹ DIRECTOR OF ENVIRONMENTAL & ENERGY POLICY, WISCONSIN MANUFACTURERS & COMMERCE

Mr. VEBBER. Thank you.

Good afternoon, Chairman Johnson, everyone that is here. I would like to say thanks to the University for having us as well to this beautiful facility.

As the Chairman said, I am Lucas Vebber. I am the Director of Environmental & Energy Policy at Wisconsin Manufacturers & Commerce. We are the State's Chamber of Commerce and manufacturers association. We have about 4,000 members of all sizes across every sector of the State's economy. About one in four private sector employees in the State works for a WMC member company. Our members are very concerned about both of these rules.

The EPA rules we are here to discuss today are broad, unprecedented expansions of Federal power that will impact a wide variety of our members in very negative ways. Cost estimates put these rules, especially the Clean Power Plan, amongst the most expensive regulations ever promulgated. They were promulgated without a single vote of Congress. In fact, there is actually bipartisan efforts in Congress right now actively trying to stop both rules.

These rules will fundamentally change the regulatory environment in Wisconsin and throughout the United States. It will certainly have vast consequences for our economy for a generation. It is going to cost our State tens of thousands of jobs and weaken our economy at a time when we can least afford it.

My written testimony that I submitted goes into more detail on what the rules do. I will use the remainder of my time to just highlight a few of the key points on both the rules.

The WOTUS rule, is a confusing and unnecessary regulation that puts State business and private property owners at risk. One of the stated goals by EPA in creating the WOTUS rule was to ensure, quote, "that the waters protected under the Clean Water Act (CWA) are more precisely defined, more predictably determined, and easier for business and industry to understand," unquote. Ironically, the actual rule goes in the opposite direction. It creates uncertainty and confusion every step of the way. The uncertainty created by this and the potential for an increased regulatory burden is problematic, not only for manufacturers in our State, but for agricultural producers, private property owners, as well as local and State governments.

Given the other industry-specific experts that are on the panel today, I will let them go into specifics about their industries.

But I think it is important to note also that the WOTUS rule was introduced as a bill in 2009, Senate Bill 787. It was called the Clean Water Restoration Act. It was introduced because Congress felt they needed to pass a law to enact these changes. Congress at the time had a filibuster-proof majority in the Senate, a majority in the House, and they controlled the White House. The same party controlled all three. They could not get that bill passed. So they proceeded with rulemaking. And that is why the WOTUS rule is here before us today.

¹The prepared statement of Mr. Vebber appears in the Appendix on page 40.

Suffice it to say, for Wisconsin, this rule does not improve environmental regulation. It really subjects our State to more Federal control. That will mean more regulatory burdens for businesses as well as a greater risk of litigation for our State's employers and private property owners in the State.

I would find it hard to believe, as the Chairman said, that there is anyone in our State that thinks regulators and EPA could better manage our State's pristine water resources than the Wisconsinites at DNR. And that is exactly the risk that's created by the WOTUS rule.

The Clean Power Plan requires Wisconsin to reduce carbon emissions by 34 percent to 41 percent depending on if our State uses a mass-based or a rate-based approach, respectively. In reality, it is going to be a higher percentage as the baseline year used, 2012, was deliberately chosen due to low natural gas prices that distorted the actual use of coal. Governmental emissions that year were significantly lower than other years, the lowest since the mid 1990s, in fact.

There are a lot of questions that need to be answered before we know all the specific impacts on our State, but one thing we know with absolutely certainty is that this rule will raise the cost of energy. Wisconsin produces just over 60 percent of our State's total energy from coal sources. Coal power has proven to be an affordable, efficient, and reliable energy source for the businesses and families of our State. We have made significant investments in coal technology over the past several decades, all as Delanie said, while at the same time obtaining the cleanest air we have had in decades. And it is only getting cleaner.

Less coal in our energy generation economy means more use of renewable sources. More renewables means a higher cost. Higher cost means less competitive industries, fewer jobs. It also means less money in the pockets of hardworking Wisconsin families because energy costs are not just something that businesses worry about. Families have to worry about them too.

One study on the draft rule projected the job loss to our State at 21,000 jobs for 2030 with a \$1.82 billion drop in disposable income. I should note that the final rule actually has a more stringent target for the State of Wisconsin, so we can only expect those numbers to be even worse.

The changes necessitated by the Clean Power Plan will also impact the reliability of the electrical grid. Natural gas plants will be operated at higher capacities. We will be relying more on renewables. That leaves little wiggle room to ramp up a generation should the sun stop shining or the wind stop blowing. Lack of energy reliability is yet another factor that will negatively impact our State's business climate and drive jobs and investment elsewhere to countries like Mexico and the South Pacific.

I should also note that the market is working. We do not need costly mandates from the EPA. We need reasonable environmental regulations, not unreasonable environmental mandates. Our air is getting cleaner. Our State is taking coal plants offline as part of the market process. We have about 1,400 megawatts of coal energy being taken offline over the next 5 years. Carbon emissions from energy production nationwide actually declined 10 percent from

2005 to 2013. Yet, the EPA still insists we handcuff American industry at times other countries are actually ramping up coal production, as Delanie said. By some reports, China is bringing on a new coal plant every seven to 10 days.

Thank you, again, for giving me the time to speak today on behalf of our State's businesses. I look forward to answering any questions that you may have.

Senator Johnson. Thank you, Mr. Vebber.

Our next witness is Jim Holte. Mr. Holte is the president of the Wisconsin Farm Bureau Federation and also serves on the American Farm Bureau Federation Board of Directors for the Midwest region. He also raises beef cattle and grows corn and soybean on a farm in Dunn County. Mr. Holte.

TESTIMONY OF JIM HOLTE,¹ PRESIDENT, WISCONSIN FARM BUREAU FEDERATION

Mr. Holte. I want to thank you, Chairman Johnson, and Members of the committee for the opportunity to testify on the U.S. Environmental Protection Agency and U.S. Army Corps of Engineers (USACE) final rule to define Waters of the United States under the Clean Water Act and, more importantly, the rules' impact on farmers.

My name is Jim Holte. I am a farmer in Elk Mound in Dunn County in the northwestern part of Wisconsin. I raise beef cattle, corn, and soybeans on the same 160 acres that my great grandfather purchased in 1884. Over the years, my farm has expanded to more than 800 acres of cropland, woodland, and buffer areas. Much of the farm is within the Chippewa River's floodplain, but that is not why I am here.

This rule is bad for farms everywhere. I am here to tell you, at the very best, that this rule lacks clarity when it comes to permit requirements and farming exemptions. At worst, it is a blatant overreach by the EPA and the Corps.

The EPA's actions made a mockery of the notice-and-comment procedures within the Federal Government's rulemaking process in three key areas.

First, during the rulemaking process, the EPA dismissed concerns about the rule as being silly or ludicrous or myths. Statements from agency officials made it clear that they really were not listening to objections.

Second, the EPA engaged in a PR campaign to solicit support for the rule. The campaign shared blogs, tweets, and YouTube videos about the rules' reported benefits, but failed, with any meaningful information, about the rules' actual content.

Third, the EPA allowed its own internal timeline to dictate issuance of the proposed rule before the fundamental scientific study underlying the proposal was complete. It later dictated issuance of the final rule without providing any further public comment.

This unchecked process culminated in a deeply flawed regulation whose true costs were never really considered and will not be known for years.

¹The prepared statement of Mr. Holte appears in the Appendix on page 49.

I have concerns about how this rule will be implemented and how the Corps of Engineers struggles currently to keep up with its current caseload.

I would like to share a short story: In 2013, a farmer by the name of Joe Bragger from Buffalo County wanted to install a temporary bridge over a very small creek on his farm. His application to the Wisconsin Department of Natural Resources (DNR) was submitted in late December 2013. It took the DNR less than a month to review, approve, and issue a permit application and forward it to the Corps of Engineers for their consideration.

More than a year and a half later, the Corps closed out Mr. Bragger's application without a determination or any notification to Mr. Bragger. And it was not until Mr. Bragger requested the assistance from a Farm Bureau employee that it came to light that the Corps had erroneously closed the application file and failed to notify Mr. Bragger of anything.

The system is not working as it should. If the Corps cannot sort out what to do with an application for a permit for one temporary bridge over a small creek in Buffalo County, Wisconsin, how on earth do the authors expect the Corps to handle the tens of thousands of additional permits that this rule will trigger for agriculture?

Two years was too long to wait for an answer, nor can farmers wait for 2 years to find out if they can do normal activities like till their fields, apply fertilizers or pest management products. Crazy as it sounds, that is what this rule will require on farms like mine and thousands of others.

As I said, much of my farm falls in a floodplain. Yet, even the lowest fields have long-term grassland and wood lot buffers that separate them from the Chippewa River. This rule would stop me from farming any of those fields that are shown on the second and third aerial maps that I provided in my printed testimony.

But what is most egregious is the 80-acre field shown on the very first map in that conclusion, that field sits high and dry at an elevation 80 feet above where my home is at. Yet, it will be regulated by this rule because it has some sloping areas where water will run during a normal spring rain. It does not seem to matter that this water has zero opportunity to impact any waterway.

In closing, the EPA and the Corps has repeatedly assured in speeches and blogs that the new rule will not increase permitting obligations for farmers or get in the way of farming. These statements are misleading as the examples for agriculture as interpreted by the EPA and the Corps will not protect farmers from burdensome permit requirements and devastating liability under this proposed rule. Bottom line, the Courts are unlikely to give consideration to old speeches and blogs.

It is impossible to know how many farmers and landowners will be subject to agency enforcement or sued by private citizen lawsuits, but what is certain is that the vast number of common, responsible farming and forestry practices that occur today without the need for a Federal permit will be highly vulnerable to Clean Water Act enforcement under this rule.

Thank you.

Senator Johnson. Thank you, Mr. Holte.

Our next witness is Henry Schienebeck. And Mr. Schienebeck is the executive director for the Great Lakes Timber Professionals Association (GLTPA). Mr. Schienebeck.

TESTIMONY OF HENRY SCHIENEBECK,¹ EXECUTIVE DIRECTOR, GREAT LAKES TIMBER PROFESSIONALS ASSOCIATION

Mr. Schienebeck. Thank you, Mr. Chairman. I appreciate the opportunity to be here today to testify on WOTUS.

GLTPA believes that WOTUS is a far-reaching, unnecessary rule that provides no documented positive implication for water quality. However, because of the expanded territory, it will undoubtedly add great expense and costs to the operations of farming and forestry. Actually, it is hard to imagine any industry that is not impacted by surface water.

The forest industry is the second most financially significant industry in Wisconsin after agriculture, and it generates almost 60,000 direct jobs and over \$23 billion in annual activity. Northern Wisconsin's rural communities, in particular, are dependent on forestry for their economic, social, and ecological well-being. Actually, it is our culture, it is our way of life. And a lot of our members are third, fourth, and fifth generation.

Due to the naturally wet landscapes of Wisconsin, GLTPA is concerned that WOTUS could irreparably harm Wisconsin's economy.

Wisconsin already leads the way in water quality standards associated with forests. In 2013, the Wisconsin Department of Natural Resources conducted 75 audits on State and county timber sales. Best management practices for water quality were correctly applied in 97 percent and 95 percent of the audited sites, respectively. In 2014, the monitoring team visited 58 Federal and large landholder sites and found similar numbers in a positive manner.

As it stands, WOTUS seeks to improve water quality by greatly expanding the EPA's already broad authority, thereby reducing local water regulation and control. How could taking control away from people already doing such an exemplary job improve water quality?

EPA may question why GLTPA is concerned about the rule since silviculture currently has an exemption under WOTUS. At this time, it is unclear whether the EPA would seek to remove the silvicultural exemption. Frankly, we do not trust that the exemption will remain in effect for very long. In 2014, the National Resource Defense Council filed a lawsuit seeking to remove the exemption, claiming forest roads cause sediment-laden runoff into WOTUS. Further, EPA itself stated in 2012 that it was looking at regulating forest road runoff.

A silvicultural exemption without clear protection of forest roads would mean people could harvest their timber but have no way of removing it from the forest without the permission of the Federal Government. Since there is no evidence removing the exemption will improve water quality, does it make sense to add cost and confusion to an already effective and efficient process?

Given the outstanding job the forest products industry has done in maintaining and even improving water quality, removing this

¹The prepared statement of Mr. Schienebeck appears in the Appendix on page 96.

exemption would serve no purpose other than to give the Federal Government expanded jurisdiction. This could cost the industry time and money without additional benefit to the environment. Also, BMP's if WOTUS were to be implemented in place of the State BMPs currently being used by forest managers, the vagueness of the rule would make it very difficult for anyone other than a Federal or affiliated employee to make a determination as to what qualifies as a wetland. Managers would fear being overruled and prosecuted for disturbance of a WOTUS. This would potentially increase cost if a land manager needs to interact with the Corps or the EPA on every decision.

EPA has written that the rule does not protect any types of waters that have not historically been covered by the Clean Water Act or add any new requirements for agriculture. This is a very misleading statement. Perhaps the Clean Water Act historically covered wetlands, but it has not covered every drop of water on every piece of land. Under the new WOTUS, every piece of property could be included in wetland regulation, completely stifling or destroying any economic value gained by those resources.

Perhaps the rule is not explicitly adding any new requirement for agriculture or silviculture, but how is expanding the regulated land base not requiring more time and money for compliance to expanded EPA and Corps authority? Even though an exemption exists, a farmer must now investigate every potential WOTUS on his property. Even then, because of the vagueness of the rule, he may face government prosecution for up to 5 years after unknowingly having discharged a regulated substance into WOTUS.

Despite evidence that current State-level water BMPs are working very well, EPA continues to seek expansion of their authority. It is beyond comprehension that WOTUS will have any significant gain in water quality while expending billions of dollars of taxpayer money that could be put to better use such as reducing the national deficit or dependency on foreign energy.

I am happy to take any questions. Thank you.

Senator Johnson. Thank you, Mr. Schienebeck.

Our next witness is Bruce Ramme. Mr. Ramme is the vice president of Environmental at WEC Energy Group. Mr. Ramme.

**TESTIMONY OF BRUCE RAMME, PH.D.,¹ VICE PRESIDENT,
ENVIRONMENTAL, WEC ENERGY GROUP**

Mr. RAMME. Good afternoon, Chairman Johnson. And thank you for the opportunity to appear here this afternoon. In the capacity as vice president of Environmental for the WEC Energy Group, I am responsible for environmental compliance strategy and planning, mitigation and risk management, environmental permitting of new projects, compliance assurance, and identification of new and/or enhanced means of benefiting the environment through business practices at our utilities.

The WEC Energy Group, headquartered in Milwaukee, has \$29 billion of assets and employs 9,000 people. We are the eighth largest natural gas distribution company in the country and one of the 15 largest investor-owned utility systems in the United States. We

¹The prepared statement of Mr. Ramme appears in the Appendix on page 99.

provide electric, gas, and steam services to nearly 4.4 million customers in four States—Wisconsin, Illinois, Michigan, and Minnesota. Two of our six utilities are in Wisconsin, We Energies is in Milwaukee and Wisconsin Public Service is in Green Bay. We are the largest electric and gas provider in the State, providing half of the electricity and nearly 69 percent of the natural gas delivered to the residents of Wisconsin. Over half of our generation comes from our eight coal plants. All but one of those plants are located in Wisconsin. The seven Wisconsin coal plants are capable of producing over 5,000 megawatts of electricity and employ nearly 800 people.

Thank you, again, for the opportunity to appear before you today. And thank you for your leadership on this important issue, for your perseverance in pursuing improvements to the Federal permitting process and other regulatory reforms, and for working to keep us safe here at home.

I am going to focus my remarks today on the Clean Power Plan because of its significant impacts, but I will be happy to also respond to questions about the Waters of the United States. As you know, the EPA issued its final greenhouse gas rule for existing units in August of this year. We filed comments in response to EPA's proposed rule and also participated in a joint Wisconsin utilities filing. We were pleased that EPA appeared to respond to some of our concerns, mainly the interim target, the safety valve, and trading, but we remain very concerned about some key issues in the EPA final rule, the uncertainty that it brings, the lack of recognition for early action, the 2012 baseline, and the gas dispatch building block.

Since 2003, we have invested nearly \$12 billion to proactively upgrade our systems and significantly improve the environmental performance of our generating units. We have been leaders in reducing emissions, and we believe EPA should recognize our initiatives, which include investing more than \$1 billion in renewable energy, including three large wind farms and a new biomass plant, investing more than 1 and a half billion in state-of-the-art emission control technologies to new and existing units, adding new generation, repowering an older, less efficient coal plant to a combined-cycle natural gas plant, and converting a coal-fueled cogeneration facility to natural gas. We invested in electric and gas distribution system upgrades, and invested in energy efficiency for our customers. As a result of these early actions, the new coal-fueled units at our Oak Creek and Westonsites and the new natural-gas-fueled units at our Port Washington and Wrightstown sites are among the most efficient in the country.

Over the past 15 years, we have increased our generation capacity by more than 40 percent while reducing emissions of sulfur dioxide, nitrogen oxides, mercury, and particulate matter by more than 80 percent. Our CO₂ emissions also decreased to a level that is below the year 2000.

EPA retained 2012 as the baseline year to calculate State-specific emission rate goals. 2012 is not a representative baseline year. The economy was still recovering, and natural gas prices were unusually low. These factors resulted in a significant reduction in the use of our coal generation.

One of the main components in the EPA rule is a series of building blocks. The second building block calls for operating existing gas plants more often. This re-dispatch of existing gas plants is technically feasible but will fundamentally change the operation of our Nation's energy markets from the current practice of economic dispatch to environmental dispatch. Economic dispatch is based on the least cost to our customers. Moving away from economic dispatch to environmental dispatch will increase our customers' costs.

In conclusion, EPA's greenhouse gas rule is complex and far-reaching and will significantly change the electric utility industry. There is a great deal of uncertainty throughout the rule, but one thing is certain. Costs will increase for our customers.

Mr. Chairman, as you know well, we build things in Wisconsin. Wisconsin has a large manufacturing base. And many of those industries and companies rely on electricity to help manufacture their products. An increase in electricity costs could have an impact on their competitiveness, not just in the United States, but abroad as well.

Unfortunately, I do not have current cost estimates to provide to the committee at this time. We, along with the other utilities in the State, are modeling our systems and have contracted with the Electric Power Research Institute (EPRI) to model the Clean Power Plan and its impact on Wisconsin's State utilities and our customers. Preliminary results should be available next year. EPRI is a recognized expert in the industry.

Thank you, again, for the opportunity to testify before the committee and for your leadership on this important issue. And I will be happy to respond to questions as well.

Senator Johnson. Thank you, Mr. Rammie.

Our final witness is Mr. George Meyer. Mr. Meyer is the executive director of the Wisconsin Wildlife Federation. Mr. Meyer.

TESTIMONY OF GEORGE MEYER,¹ EXECUTIVE DIRECTOR, WISCONSIN WILDLIFE FEDERATION

Mr. MEYER. Thank you very much, Senator Johnson.

Before I give my testimony, the Wildlife Federation would like to thank you for your efforts supporting sportsmen on the issue of State management over wolves and your bill that was just introduced this week, your prior efforts in supporting the State Wildlife Grant Program, and your support for attention to Federal lands. We really appreciate that very much.

On the issues before us today, the Wisconsin Wildlife Federation represents over 195 hunting, fishing, trapping groups located throughout the State of Wisconsin with a membership of over a hundred thousand members.

My personal experience includes 45 years of environmental regulation in the State of Wisconsin. The sportsmen I represent, both in Wildlife Federation and groups like Ducks Unlimited, Pheasants Forever, Trout Unlimited, and scores of other sportsmen's groups across the country, are strongly supportive of the Waters of the United States rule.

¹The prepared statement of Mr. Meyer appears in the Appendix on page 106.

And it is for very obvious reasons. Those wetlands and small waterways that form the head waters of our streams and lakes in the State provide valuable habitat for fish and wildlife, which is the life blood of our recreational pursuits.

But it is not just a cost versus recreational standpoint. We are big business in the country and in this State. In the United States, sportsmen have a total economic impact of \$201.4 billion, supporting one and a half million jobs. In the State of Wisconsin, the total economic impact of hunting, fishing, and trapping is \$7 billion. We are big business.

The WOTUS rule, Waters of the United States rule, has no impact in the State of Wisconsin. And the very reason for that is the first rule was struck down in 2001 by the U.S. Supreme Court. But the citizens of Wisconsin were so concerned about losing that protection of their wetlands and waterways, within 90 days, they asked the State legislature to adopt the same regulations under State law. So within 90 days, a bipartisan legislature and a Republican Governor adopted the Federal regulations which had been struck down, which most Federal regulations were stronger than the regulations that are being proposed today. So there is no change in wetlands regulation in the State of Wisconsin because of the Waters of the United States rule.

There will be Federal jurisdiction and State jurisdiction. But as there was in the past, there will be a general permit issued by the Federal government to DNR. So anyone that gets a DNR permit automatically gets a Federal permit.

So why are we concerned then as sportsmen for the WOTUS rule? Well, we hunt in every State in this country. Right now I have members scattered across the hunter duck hunting or doing other water-based hunting or fishing. We want to be able to go to those other States and enjoy their waterways. Migratory water foul go through—from Canada down through our States down in Tennessee, Arkansas, and Louisiana. We want there to be good wildlife water foul habitat in those States so that there will be large enough populations that we will also have water foul in Wisconsin. You need good habitat throughout the flyway.

Let us talk about the Clean Power Rule reductions. One of the major concerns raised—and it is a legitimate issue to look at—is the cost of applying the CO₂ reduction rules. As was stated previously, we have had strong Federal and State regulation of other pollutants—sulfur dioxide, nitrous oxide, carbon dioxide. It was because of that Federal and State regulation that we have had those dramatic reductions in those health-problem-causing pollutants. But we have not had CO₂ regulations, which have a major impact on climate change and the future of our planet. These are the first regulations of those nature in the U.S. Government. And despite voluntary efforts—and there has been some good voluntary efforts by companies in the State—we are not going to get the kind of reductions we need without regulations. And are not going to be able to get countries like China or Russia or India to step up to the plate if, in fact, we do not show the leadership in this country to reduce carbon reductions.

An estimate of the costs have been put together in the State by the Public Service Commission and the Wisconsin Department of

Natural Resources that, in fact, the cost would be between 4 billion to \$13 billion. I can go into the reasons that those are based on faulty assumptions during my written testimony. But one thing I have learned over 45 years of environmental regulation is that those costs are always substantially overestimated when the rule goes into effect. And my experience is that the final cost is usually between 10 to 20 percent of the estimates.

And for my tenure as secretary of the DNR, I will give you an example. There was a regulation put into place by the United States to reduce toxic wastewater discharges into the Great Lakes. It is called the Great Lakes Initiative. Industry estimated that in eight Great Lakes States, by regulating the discharges for municipalities and industries into the Great Lakes, it would cost industry and municipality \$13 billion. And it allocated \$2 billion of those costs to the Wisconsin industry and municipality. We scratched our heads in Wisconsin because we had adopted the same regulations 8 years earlier, and the true cost in Wisconsin was \$200 million.

I found that to be true in virtually every cost estimate for implementing major environmental regulations over my career.

Thank you very much.

Senator JOHNSON. Thank you, Mr. Meyer.

I would like to point out before we go into questions that we did invite the EPA administrator, Gina McCarthy, to appear here and testify, and she declined. Again, I realize she is pretty busy. So we did ask if she would send a representative, and she did not, which is very unfortunate.

We held a field hearing like this in Tomah after the tragedies within the Tomah Veterans Affairs (VA) health care facility. And the VA sent us two really high quality witnesses—it was extremely helpful. They heard the powerful testimony. And as a result, the VAs actually responded. The VA office inspector general retired after deep-sixing about 140 reports. And the doctor who was prescribing opiates—they called him Dr. Candy Man or the Candy Man—has been terminated. So it was extremely helpful that the agencies actually came to a State to hear directly from people affected by their decisions.

So it was very disappointing that the EPA would not send a representative. But this is the first step in the process. I mean, this will be something we will continue to explore. And if we have to go to Washington D.C., I might ask a couple of you to travel. I hope you would not mind. But we do have to get the actual agency hearing the stories from Wisconsin as well.

Mr. Meyer, let me quick start with you. How many years did you work with the DNR?

Mr. MEYER. 32.

Senator JOHNSON. 32 years. So you have a fair amount of experience with the DNR.

Mr. MEYER. I do. I am an older guy.

Senator JOHNSON. Well, I was not implying that. I have white hair too.

I really worked very cooperatively with the DNR in my 37 years in the plastics business and always appreciated their expertise. I did not get the sense that the DNR lacked concern for our environ-

ment. I would say they really were concerned about the environment. Is that true?

Mr. MEYER. Very true.

Senator JOHNSON. So why isn't the DNR in Wisconsin, who is very concerned about the environment, as we all are—why isn't their regulation over Wisconsin's environment adequate?

Mr. MEYER. I think it is. And I think my testimony on the Waters of the United States rule is that, in fact, the State is covered. It has been covered except for 90 days in the year 2001. And, in fact, that is why I think the adoption of the WOTUS rule is not going to have an impact on forestry and agriculture and the industry in the State of Wisconsin. I do believe in the system that was created by the Federal Government when the Federal Government adopts a regulation and then delegates authority to the States and allows the States to do the regulation.

And while one of the methods in the Clean Power Rule is to allow the State here—it sort of gives the goal of what has to be done in terms of reductions but then allows a State to work with its utilities to come up with the right combination, as Bruce indicated, of the various components to tailor-make the regulation to that State and then let the State enforce those regulations. So it is a combination.

Senator JOHNSON. Yes. I would say the Federal Government really did take that attitude, kind of stepping back and letting States really run these things. Maybe, that is a pretty good argument.

But do you understand businesses and organizations are concerned that sometimes the Federal Government, even though they say they are not going to get involved, get involved in an awful lot and can do some definite overreaching? I mean, do you understand the concern of the other people on the panel here?

Mr. MEYER. I understand the fear. But I found that very few times in my tenure with the DNR, and the head of the enforcement division before I was secretary—that there were very few times, less than a handful—and that covers 20 years in my career where there was overfiling by the Federal Government, that they stepped in where the State did not want to. And some of the situations were dealing with State facilities because they knew the political pressure on the DNR did not regulate the Department of Administration.

Senator JOHNSON. I mean, the concern here is that the Federal Government is ramping up its jurisdiction over the States, though. They have, in some respects, taken a step back.

And this is where I really want to go to Ms. Breuer to talk about the history of the Federal Government and federalism as it relates to environmental control. And, obviously in Article 1, Section 8, we have the commerce clause, which does allow the Federal Government to get involved in interstate commerce and regulating it.

And then in 1824, in Gibbons versus Ogden, in a unanimous Supreme Court decision, they extended the regulation under the commerce clause over navigable waters. And to me, that makes sense.

Let us say you have a stream in Wisconsin that enters into the St. Croix River, then dumps into the Mississippi. If you are polluting that stream, it is not just going to affect Wisconsin. It is

going to start affecting Minnesota, Iowa, and, all the other States downstream.

It is about navigable water. I do want to quickly read the definition of navigable water by the Army Corps of Engineers. "Navigable waters of the United States are those waters that are subject to the ebb and flow of the tide," ocean tide, "and/or are presently used or have been used in the past or may be susceptible for use to transport interstate or foreign commerce." That is pretty clear, and that makes an awful lot of sense. And that's really been the standard for almost 200 years. And it really has not been under dispute. The Federal Government does have—because it is really a national treasure, these navigable waters.

Can you just kind of speak to how this is different when we start talking about Waters of the United States?

Ms. BREUER. Sure. So one of the things that Waters of the United States rule does is diminish the certainty with regard to what they call neighboring waters or adjacent waters to navigable waters. So the common citizen thinks navigable water is one that I can paddle a boat down—right? or drive a boat down. And the EPA is now saying, well, basically anything that flows into a navigable water is also our jurisdiction, and that includes ponds that are within certain distances of navigable waters, even when there is absolutely no connectivity. So the DNR in the State cannot regulate someone who builds a pond on their land that has no connectivity to a navigable water, but now the EPA has potential jurisdiction over those on private land, on public land. It does not matter.

And the neighboring waters, it is really just about where they are distance-wise in relation to navigable waters.

This rule really expands what we think of as navigable waters to touch pretty much anything, including the streams that run through farms and land that do not even have water running on them every day, every year.

Senator JOHNSON. But again, you were actually using a more expansive definition of navigable waters than the Army Corps. Again, the Army Corps is very clear that it has to be affected by the tides. Is there any water in Wisconsin that's affected by the tides other than the Great Lakes?

Ms. BREUER. Maybe the Mississippi.

Senator JOHNSON. OK. Or have been used in the past, presently used, or susceptible for use to transport interstate or foreign commerce. I mean, little streams that—

Ms. BREUER. Right.

Senator JOHNSON. Intermittent streams, things that dry up when it is not raining, they cannot be—

That is actually a very clear definition; correct? Has there been an expansion in law beyond that definition?

Ms. BREUER. No. The expansion has come through the rules, which we argue in our lawsuit is illegal and violates the commerce laws. And that is one of the main arguments that we put forth in the challenge to the Waters of the United States is that this is a complete constitutional violation.

Senator JOHNSON. Mr. Holte, in your testimony, you talked about an attempt in 2009. It was the Clean Water Restoration Act. This

is, again, in the first two years of Obama Administration where they had a 60-vote filibuster-proof majority in the Senate. A strong—

Oh, I am sorry. Mr. Vebber.

Mr. VEBBER. Yes.

Senator JOHNSON. A strong majority in the House. And there is a recognition that on the part of Congress and in the party that is in control, that in order to change the definition of navigable water, they actually had to pass a law. Can you describe a little bit more about that?

Mr. VEBBER. Sure. Absolutely.

You saw the bill introduced, which would have changed the definition of—it would have changed navigable waters to Waters of the United States in Federal law. That bill was introduced because members of Congress felt that they needed a law to make that change. That law was not passed, despite having what could have been a path to passage there with majorities of both Houses and control of the White House.

Senator JOHNSON. How far did it get?

Mr. VEBBER. I believe it got through the Committee process and then never passed on the floor.

But unfortunately then, shortly 120 thereafter, we saw the administration forward the rule, a rule that was based largely on the bill that failed to pass.

I think you see similar things playing out, unfortunately, in other EPA rules. You see the Clean Power Plan, for example, anticipates some type of a cap-and-trade system which has been introduced time and time again in Congress and time and time again rejected.

It is a troubling State of affairs certainly.

Senator JOHNSON. In the Clean Water Restoration Act, the information I have is, again, they were not trying to redefine navigable waters. They were just trying to increase the jurisdiction of the Federal Government over different types of waters and wetlands.

Included in the definition would be including intermittent streams. Anybody know what an intermittent stream is? Is there a pretty exact definition of that somewhere in law?

Mr. MEYER. It does not flow all the time.

Senator JOHNSON. OK. So that would be a long ways from navigable water then; correct? You certainly would not be able to use an intermittent stream to engage in interstate or internet—or foreign trade and commerce; correct?

Mr. MEYER. Right.. You would not.

Senator JOHNSON. OK. So that would be a significant expansion of the navigable water standard; correct?

Prairie potholes. Anybody know what a prairie pothole is? Kind of a—

Mr. MEYER. Great place to duck hunt.

Senator JOHNSON. Duck hunt. OK.

Wet meadows?

And then I—actually, a playa lake. That is just a bigger prairie pothole, I think, is what that is.

Again, all these things are intermittent and a long way from navigable for the use of interstate or foreign trade and commerce; correct?

So, again, the point I am trying to make is this really is an attempt for a dramatic increase in jurisdiction by the Federal Government over waters within States. Again, this is a Federal system here that I would agree with, Mr. Meyer, that the DNR really is concerned. By the way, so are Wisconsinites. We are really concerned about our environment. We are a bunch of hunters. I am a fisherman. We really are concerned about that.

And I guess that is the question. Is the Federal Government really more concerned about Wisconsin's environment than we are? And is it worth the concern? I think it is a legitimate concern in terms of the Federal Government coming in here and creating an awful lot of uncertainty in terms of permitting, and exactly how to comply.

Mr. MEYER. I am confident Wisconsin can handle it because of our legislation, but what I am not confident is that other States are going to be able to do the same thing without some Federal involvement.

Senator JOHNSON. OK. One of the things we have to consider is the potential penalties. And who is best able to talk about the fact that, I have seen reports that potentially 92 percent of land mass of Wisconsin be subject to the Waters of the United States.

Mr. MEYER. No.

Senator JOHNSON. OK. So I would like to have a discussion there.

Also, potentially, per violation, \$37,000 per day could be the potential fines if you do not obtain the necessary permit.

It looks like Mr. Holte would like to talk to that.

Mr. HOLTE. Yes. You mentioned about the amount of the land in the State that could be subject to control. And that really comes to the point that we made about the vagueness of the rule. You could easily take this rule and interpret it to say that when I have an inch and a half of rain on my sloping ground and the water runs in little rivulets off it, that becomes the Waters of the United States.

Senator JOHNSON. That would be like an intermittent stream.

Mr. HOLTE. I guess it could be.

But the impact is that, therefore, in that stream, I now need a permit in order to do tillage, I need a permit in order to spread fertilizer or manure, I need a permit to apply any crop protection products on any ground that has enough slope that water can run off it in a two-inch rain. And there comes where our great concern in agriculture is where this could—by the simple interpretation of the rule where it is vague, it could include, as you say, 80, 90 percent of the ground in Wisconsin.

We have asked, as an organization, the EPA to take a look at five or six different farms across the country and give us interpretations on those areas. They have declined. We still struggle with this vagueness.

And again, as they have gone through the process of creating this rule and taking comments and testimony and then, in the end, implemented a stricter rule, in the tip of a pen, they can eliminate

any exemptions we currently have. And we have no recourse, no legislative recourse. This is done without any legislation passing. That kind of capitalizes the concerns we have in agriculture—the vagueness, the ability to eliminate any exemptions that are there very simply and quickly. We think it is a great overreach.

And if we had some opportunity for the Corps and EPA to come and visit with us on farms and show us how it would work, we would have a lot more comfort, but we have not been able to do that.

Senator JOHNSON. So why is that not a valid concern about kind of a capricious—

Mr. HOLTE. Well, unfortunately—

Senator JOHNSON. Of those rules?

Mr. MEYER. I would agree with Jim. I think the EPA and the Corps should come and provide those examples.

But this EPA regulation is actually weaker than the one that was in effect up until 2001.

And I have a lot of experience. I cut my teeth on wetlands regulation and waterway regulation, and it did not include that percentage of Federal regulation of land in the State of Wisconsin.

But I think you should have the right to be shown exactly how it is going to apply on your farm.

Mr. HOLTE. That comes to the point, George, of our concern about the vagueness of the rule and the ease of changing the interpretation and, therefore, vastly change the impact of the rule.

And as I explained—and there is where—a lot of Wisconsin's farmland slopes. I mean, anywhere from the 2 to 6 and 6 to 12 percent of slopes are very common. And those could easily, by just interpretation, be interpreted to be a Waters of the United States. Because when I have a two-inch rain in late April and water runs off that ridge in different areas, now that whole hillside is a Waters of the United States. And I have to have a permit to do all those things I talked about.

Senator JOHNSON. Mr. Holte, in your testimony, you also talked about the exemption of ongoing farming, but you say that your concern was because the exemption was originally enacted in 1977. But the only farmland that would be exempted would be something that has been in continuous farm use since 1977.

Mr. HOLTE. Well, that—

Senator JOHNSON. Can you speak to that? That is really—

Mr. HOLTE. That gets into some of the details of whether or not farmland is continuously operated, if it changes owners or change—goes from a parent to a child or, that is one more of the vague issues that we have great difficulty with, maybe not as extreme in that particular example, but in the vagueness of where exemptions apply and do not and what really does constitute a Water of the United States and what is an intermittent stream? Is it one that occurred once in the last 8 years on this hillside of mine, or is it one that has to occur monthly every year?

Again, our great discomfort comes with the vagueness and the ease of changing of the interpretation of the rule by just a changing of the rule with no congressional oversight.

Senator JOHNSON. Mr. Holte, I believe it is also in your testimony you expressed some concern about the way the EPA actually

marketed or solicited comments outside the way they normally do. I mean, normally the way the comment is supposed to work with the Federal agency is they are supposed to issue the rule as kind of a neutral arbiter. And then based on that rule proposal, they are supposed to solicit pretty much in an unbiased fashion comments from the public that would be affected by that; correct? Can you say how this was different?

Mr. HOLTE. Well, that is very accurate.

From the very beginning of this rule's forming and composition and coming forward, our organization across the whole country has been very concerned. And so we took a great deal of activity and participation in the process of commenting on it. And it was as if our—because we were contrary to where the rule was going, our comments were made to seem unimportant. And there's occasions where they even discredited us as being—what was it?—silly or ludicrous or—or carrying on myths. So was it their place to judge our character in the submission of the rules, or is it their place to accept all submissions of comments regardless of where they come from? And that is the point I had made, Chairman.

Senator JOHNSON. I had written an oversight letter to Mr. Howard Shelanski, the administrator of the Office of Information and Regulatory Affairs, concerned about that. Because we do actually have a law, the Antilobbying Act, makes it a Federal crime to use appropriated money to influence, quote, "in any manner a Member of Congress, a jurisdiction, or an official of any government to favor, adopt, or oppose any legislation, law, ratification, policy, or appropriation." The EPA was really utilizing social media to solicit comments that were favorable to their ruling. Do you have that similar type of concern?

Mr. HOLTE. I do. In this whole process, I would have to step back and say that the EPA, I think, in their minds, has an honorable goal. And they saw this as something they needed to do to protect resources. But what they failed to do was have understanding of what actually happens on the ground. And by this they discredited the process of submitting opinions and comments, and they are not taking under serious concern those of us that are on the ground every day. And that is one of the greatest concerns I had.

Senator JOHNSON. OK. Which is, again, why we invited an EPA representative to listen to testimony, provide testimony themselves. By the way, they have a statement for the record, which we will enter.

But it would have been nice to have them here, and we could have bounced some of these ideas off them. Mr. Schienebeck.

Mr. SCHIENEBECK. Yes?

Senator JOHNSON. I have done an awful lot—and by the way, you have been helpful—I appreciate it—touring the timber land and learning an awful lot in the last 5 years.

Can you compare—this is a little bit off topic, but I think it is relevant. Can you compare the permitting process for harvesting timber from a county standpoint to a State standpoint to trying to harvest timber in a Federal forest? Can you just kind of talk a little bit about that? Because I think it is somewhat relevant to the issue we are talking about here, how the ease with which we can

do this so we can maintain healthy forests. County, State, to Federal Government.

Mr. SCHIENEBECK. Well, actually, a lot of the permitting for a stream crossing would go through the Department of Natural Resources. And we would get into the Corps—

For us, a navigable stream is something that we can put a canoe in anytime of the year and float a canoe. It does not matter how far as long as it can hold a canoe at that point in time. So for—

Senator JOHNSON. But that is a far stricter or more stringent standard than what the Army Corps lists as a navigable water; correct? So the DNR has a much tighter standard for navigable water than what the Army Corps does; correct?

Mr. MEYER. Yes.

Senator JOHNSON. Mr. Meyer, you agree with that?

Mr. SCHIENEBECK. Yes. That is our BMPs for water quality. That is what we follow for forestry operations. I mean, that is in our manual.

Senator JOHNSON. Let me quick—because I think it might have been when I was on tour with you. I have heard reports—again, it is just anecdotal—that the way the DNR determines whether they can float a canoe is they will definitely pick a really wet day after a really heavy rainstorm with a really light canoe or—and—kayak.

And then they will—if they can float that thing on initial water, that is navigable. Is that—

Mr. MEYER. We used to like those 80-pound kayakers.

We really liked them.

Senator JOHNSON. OK. So obviously—I mean, basically you have heard that. So the point being is, the DNR is far more stringent in terms of its definition of navigable water here in Wisconsin to protect our environment than the Army Corps is under current navigable water standards.

Mr. MEYER. Yes.

Mr. SCHIENEBECK. Yes. I would agree with that.

And the difference is—I mean, if you are on county timber lands, they do a super fantastic job of managing their lands. They provide all the benefits—ecological, environmental, all, social, everything that we need.

The State does a very good job, I would say, in Wisconsin.

And I also represent a lot of people in Michigan, and Michigan does a great job as well.

And the Federal forests are getting a lot better.

They are kind of going back to where we were 10 or 15 years ago. And I think a lot of that is due, in part, because you have come up, Senator Baldwin has been to our forests many times, and we have gone out and looked at them.

And good neighbor authority is going to be a huge help in implementing more of that management.

The fact of the matter is that we are all really concerned about the environment and—all of the forests because they are all multiple-use forests.

Senator JOHNSON. But again, from that standpoint, good neighbor authority is really moving more toward the type of approval process, sort of the one-stop approval process, in our State process

versus the multiple approval process for harvesting on Federal; correct? That is I really want you just to kind of get into who the agency is State versus Federal—and what that approval process is in terms of the timber harvesting.

Mr. SCHIENEBECK. Well, I mean, first of all, if you are going to do a timber harvest, you have to have an approved plan. And that has to be approved by a certified plan writer. And then you set up that management plan. And if you are going right along, we will just expedite this whole process. Then you would set that timber sale up.

And it really depends upon the amount of paperwork. Let us say if I am doing a private timber sale, my contract might be two, three, four pages. If I am doing a county timber sale, the most of them that I have done are no more than 8 to 10 pages. If I am doing a Federal timber sale, it is going to be a hundred pages and—

Senator JOHNSON. And it is a multiple-step process; right? So it is—

Mr. SCHIENEBECK. Yes.

Senator JOHNSON. County land and State, you get that approval process once, and you can go in and correct? You go through—

Mr. SCHIENEBECK. Well, they all have their own approval process. So they are separated out that way. But once we have that approval, we move forward.

Senator JOHNSON. But in Federal, you get the approval. And then there is another chance, really, for litigation.

Mr. SCHIENEBECK. Well, not—

Senator JOHNSON. That is how it was described to me.

Mr. SCHIENEBECK. Yes. I mean, once I buy the sale, it is good to go.

But to get to that point, first, when they do their 10 to 15-year plan, there is a lot of people that put comments in, so on and so forth. But then once the plan is approved, which is probably what you are referring to, is when we had our 15-year plan in place. But then when they go to put up those sales, then the litigants come forward and they want to sue after the plan has already been approved. So then—

Senator JOHNSON. That is what I am talking about. In the State, you do not have that capability.

Mr. SCHIENEBECK. Right. We do not have that—necessarily all that red tape that we go through. But it is quite common on the Federal forest.

And so we have the plan. They set up—let us just say. That is multiple timber sales up there. And litigants come forward and wanted to stop the sale. And actually, there has been a couple instances where the sales were actually sold, but they were litigated. So the foresters actually had to buy the sale back from the person that won the bid because they could not get in there for a 10-year period.

And it starts out, in a particular instance over by Laona, it was a 12-year process to get through that whole litigation to bring everybody together. There was, like, endangered species there such as ginseng, those type of things. So to get through that whole proc-

ess was a 12-year process. And that is where we see where WOTUS could have a huge impact.

Senator JOHNSON. There is your concern. If the Federal Government gets involved and claims jurisdiction over these things, you are concerned, just like in terms of harvesting timber, to produce jobs, but also to keep the forests healthy. I mean, that is probably the greatest impression I have had as I have taken the tours. Those forests that are managed where we actually allow timber harvesting are far healthier. There is far more animals in those forests as opposed to the old growth ones. I mean, they look kind of cool. They are kind of spooky, but they are dying.

Mr. SCHIENEBECK. Yes. Absolutely.

And here is one of our major concerns. And I think everybody in here that is a landowner would have the same concern. And we have a lot of private landowners in Wisconsin. If I want to come onto your property, build a road to get in there, do my harvesting, and get out, I am going to spend about 1,200 bucks to get across the 40. And I am just going to make this simple. Let us say we are going to do a mile of road. If I am just going to do a simple mile of road, I am going to look at about \$4,400. I will get in there, do my harvest, get out. And that road will be there for the next—

Senator JOHNSON. And it is the property owner that makes the decision whether he is going to let you do—

Mr. SCHIENEBECK. Yes.

Senator JOHNSON. And you can work out a deal in terms of any kind of remediation or covering up the road or sodding over it with that landowner.

Mr. SCHIENEBECK. Yes. So let us say that if we are going to look at WOTUS, we are going to look at every water pocket that is on that road. Now I am going to have to spend probably about \$8,000 because I am going to want to make sure that if you want that road to remain on your property for the next entries into your property, if there is any water sitting anywhere that generates any type of plant or a cattail or anything like that, now I am going to be required to get a permit to use that sale the next time. And if I want to make sure there is going to be no water sitting anywhere on that road, I am going to be spending about \$38,000 to put a road in because it is going to be graveled, ditched, crowned. It is going to have every feature of basically a spec road. That means you, as the landowner, are going to get less money. That means I am going to take less money as a producer. But it also means that there is going to be zero improvement in water quality because none of those ponds or none of those borrow pits that I might have created are going to have anything to do with water quality.

Senator JOHNSON. Because it is not navigable water.

Mr. SCHIENEBECK. Exactly.

Senator JOHNSON. And again, now with the State rules, you do not have to go through any of that process. You still have the DNR jurisdiction in some way, shape, or form.

Mr. SCHIENEBECK. Yes. And we follow best management practices.

Senator JOHNSON.: You have that already done. It works in the State of Wisconsin. And you really do not need the Federal Government butting in and creating high levels of uncertainty.

Mr. Meyer, do you understand the concern?

Mr. MEYER. I do. But there will be—what is happening when there has been dual restriction, since 1977, is that the Federal Government has deferred to the State government and stayed out of it so . . .

Senator JOHNSON. But they are not—

Mr. MEYER. There was actually a joint application. We filled out one application. The State issued the permit. It covered the Federal permit. And Henry would not have to build that road any differently than he does right now for the State government.

Senator JOHNSON. Well, what has changed since 1977 until today, the standard was navigable water where the Wisconsin DNR has a more stringent definition of navigable water than the Army Corps. And now that would be changing under this.

Mr. MEYER. The standard you read was the former standard from jurisdiction of the Federal Government, but that changed, and the 1972 Clean Water Act was far broader.

Now, the regulations that got struck down in 2001 took the tip off of that broader jurisdiction. But there was far greater jurisdiction between the Federal navigable water standard and that covered by the 1972 Clean Water Act.

Most of the water in this State is covered by the Clean Water Act, not just those subject to time.

Senator JOHNSON. OK. Where would I find the current definition of navigable water?

Mr. MEYER. Well, for navigable water, that would be in the Section 10 of the—and I forget what law or regulation, but it goes back to the turn of last century. But the Clean Water Act jurisdiction is in the 1972 amendments to the Clean Water Act.

Senator JOHNSON. OK. Well, I will check that out.

Mr. MEYER. Please.

Senator JOHNSON. I mean, this is my understanding that this was the current.

Mr. MEYER. It is a complicated variable believe me.

Senator JOHNSON. I think, everybody's concern. I am a business guy. I like keeping things as simple as possible.

Mr. Meyer, let us talk a little bit about costs of some of these regulations.

Mr. MEYER. Sure.

Senator JOHNSON. I mean Mr. Ramme.

Mr. MEYER. OK.

Senator JOHNSON. You stated that costs will increase. We just do not have the figure at the tip of your fingers.

President Obama, when he was a candidate, was talking about his proposed cap-and-trade policy. And he said, if enacted, because of his cap-and-trade proposal, electricity rates would necessarily skyrocket. That little chunk, that is an exact quote. Do you agree with what Candidate Obama said back then, that, his policy as it relates to the power plant, power generation, will cause electricity rates to skyrocket?

Mr. RAMME. I would say already, over the last half of a dozen years or so, we have seen so many regulations occurring.

If we go to this Clean Power Plan that we are talking about and the Waters of the United States, I see increased costs coming from both.

And in the case of the Waters of the United States, it just adds additional complexity. Now we are running electric or gas lines somewhere. We have to go spend the time to figure out, is it a jurisdictional ditch or not? So a lot of this is about ditches, really, in there. And Wisconsin already has very protective rules.

On the Clean Power Plan side, if we look at that, we do not have our estimates yet. Whatever number I would give you today I can just about guarantee would be wrong. And so I do not want to do that. And—

Senator JOHNSON. Of course, isn't that part of the problem is we just, in the end, never know? I mean, the costs end up being hidden? Nobody, in the end, really accounts for them in terms of when these things were implemented. And 5, 10 years later, now they have been—people have spent the money. And you have your costs. And you go to the Commission and submit your rates, and you get—because you can justify the costs, rates go up. And who ends up paying for that?

Mr. RAMME. All of our customers. And I said in my testimony there that the cost will increase. I am confident of that. It is just by how much in this case.

And I think these are very complex rules. And, we have been analyzing them. We have commented on the proposals and when they came out. And we keep learning things, as we go through these rules.

The other thing that goes on, I think George mentioned, that a lot of times the estimates tend to come in lower than originally projected. And that may be true in some cases because there is a lot of uncertainty that comes with the rule.

And, you are looking at how are we going to do it? Once this becomes a regulation or rule, we have to rise to the occasion and find a way to meet those requirements. And, sometimes we are very good at that. And in this case, I think this is more challenging than usual.

Senator JOHNSON. Well, in my background memo, one of the things the staff listed for me a number of different standards. And these actually come from the Department of Energy. Things like refrigerator efficiency standards and water heaters. For example, in 2011, the refrigerator efficiency standard increased the price of a refrigerator by \$83. In 2010, the water efficiency standard increased the cost of a water heater by \$464. A fluorescent lamp, \$12. Another one for a fluorescent lamp is \$3. Electric motor efficiency standard, \$313. A walk-in cooler—now, probably not a whole lot of people buy walk-in coolers—but, \$1,086. You just total the whole thing up, just from 2009 to 2014, some of these efficiency standards, if you were unlucky enough or lucky enough to be able to afford to buy all these products, that is about \$2,400 of increased cost on the product that is pretty hidden.

And isn't that part of the problem that you in the end, we just all end up paying—

I would ask the question—because I have seen different studies. And one of the reasons I do not throw out the numbers is because,

I see a wide variation of it. But does anybody have a study or a quote or figure in terms of estimates of how much it costs per Wisconsin family some of these regulations on energy? Anybody want to step up to the plate on that one?

Ms. BREUER. I can speak to it a little bit. It is more of a percentage than an actual number. I was very intimately involved in the modeling that Mr. Meyer does not like that the PSC did. So I was very close to this in my last position at the Public Service Commission. And it is more of a percentage. And it is double digits, 10 to 25 percent.

The reason there is such a range in the cost estimates, the 4 to 13 billion, is because of the different compliance options and the different ways that different plants are treated.

One way to come into compliance with this plan is to build all new natural-gas-fired plants. Take a bulldozer to the rest of your old fleet even though you are still paying for that. Because those new plants are under a different standard. They are not under the 111(D). They are under the 111(B). And so they do not really count under 111(D). That is not a practical solution, but it is the lowest cost option.

And the better way to do it is to keep some of your coal online for reserve, but then you are going to have to buy credits from somewhere else. And that is a more expensive option.

So it is more about a percentage increase than an actual number. Because right now the large energy users that Lucas represents carries so much of the burden of the infrastructure costs that if they start going away, then all of the residential bills will go up even more because they will have to pay for what industry was previously paying for.

Senator JOHNSON. Mr. Ramme, you talked about investing 13, \$14 billion already. Do you have a calculation in terms of what that—obviously you invested that money. That goes into your rates. Do you know how much those investments have increased the families' of energy costs?

Mr. RAMME. It was, I think, \$12 billion that I cited there. And, I would have to go back and look at the revenues over that period of time. Sorry. I don't know that.

Senator JOHNSON. OK.

Mr. RAMME. I can get back to you with that.

Senator JOHNSON. But again, those are costs. And those do get allocated into rates; correct?

Mr. RAMME. They are very real as far as that goes so . . .

Senator JOHNSON. OK. Ms. Breuer, I did really want to talk—because you did not cite in your testimony the actual decision, but the Chevron decision. You were talking about how the agencies, particularly over time, have really become, I would say, a little more vague in their regulations because of that Chevron decision by the Supreme Court that basically says that the agencies themselves will be responsible and, really, be looked upon for guidance in terms of, what the law actually says.

Now, I want to just quickly quote some examples of what we are doing here in Congress in terms of writing frameworks for laws rather than the actual laws. But both Obamacare and Dodd-Frank. And I always get them mixed up. But I think Dodd-Frank was

350,000 words. Obamacare was 380,000 words when passed. The last time I looked, about a year ago, Dodd-Frank was up to 15 million words, and Obamacare was over 12 million words. An enormous amount of law being written by the agencies.

And then the Supreme Court relies on the agencies in terms of how to interpret it; correct? Can you just kind of speak to that? Because you did allude to that in your testimony.

Ms. BREUER. Yes, absolutely.

It is sort of a fill-in-the-blank game. The regulations, the laws, and then subsequently the rules are written intentionally vague, in my opinion, so that, later on, the agency can mold that law to do what they want it to do.

So one example is the Clean Power Plan. They are using Section 111 of the Clean Air Act that has so rarely been used that nobody really knows what it means. And they are relying on Chevron deference to be able to interpret that law to mean what they want it to mean.

And that is exactly the concern with the Clean Water Act and the Waters of the United States rule as well. If they leave it vague, if they do not add clarity, then maybe not next year, maybe not the following year, but in 5 years, they are going to say, well, we really want more control over the farms and the hillside of Wisconsin, so this is what we really meant to say back then.

And even more concerning is the holes that they leave in those regulations, leave the folks subject to those regulations open for citizen lawsuits. And any ambiguity in these regulations just encourages citizen lawsuits from Sierra Club or others which costs a lot of money to defend and bring no value to the farmers and the timber workers of Wisconsin.

Senator JOHNSON. Can anybody here on the panel speak the process of sue and settlement?

Ms. BREUER. I can speak a little as well.

Senator JOHNSON. OK. Sure.

Ms. BREUER. We see this in the utility industry on occasion where an environmental group or an NGO will bring a case against the EPA, trying to force the EPA to move in a certain direction. And then that group and the EPA will settle even though, relatively speaking, they are on the same side. So they will settle. And then, the folks on the other side of the issue are not really brought into those discussions.

And we have seen it with some of the past national ambient air quality standards. The utilities have to negotiate consent decrees with the EPA, and the State regulators have no say in that. So the utilities and the EPA agree to spend a certain amount of money on upgrading, your fire-power heater, your wood heater, or what have you. And then they bring it to the Public Service Commission of the State. And the Public Service Commission—the State regulators have no choice but to allow the utilities to do it and to charge it back to their customers. So it is an agreement between basically the environmentalists and the EPA. But they are using rate payer and taxpayer dollars to pay off that settlement. And it is frustrating, and it is a broken process.

Senator JOHNSON. And it pretty well renders Congress pretty much useless—

Ms. BREUER. That's right.

Senator JOHNSON. And which means the people.

Ms. BREUER. And State regulators as well.

Senator JOHNSON. I think final line of questioning, I would like to talk to Mr. Ramme about the 2012 baseline.

And I think, Mr. Meyer, you might have a different opinion on that.

So can you just kind of talk a little bit about the way the EPA set those rules and why the 2012 baseline, which is really penalizing in terms of Wisconsin?

Mr. RAMME. Well, if we look back at 2012, it was a year where the economy was not doing very well. And it was also a year that natural gas prices were unusually low. So that combination resulted in the natural gas generation facilities running much more than they ever had.

Senator JOHNSON. Which would have lower CO2 emissions.

Mr. RAMME. Right.

Senator JOHNSON. OK.

Mr. RAMME. And, of course, if those facilities are running and the economy is not going great, the coal facilities are not running as much. And so the CO2 emissions were much lower that year.

But again, when you look at the cost of natural gas, it is not representative. And the CO2 emissions are not representative. And the coal plants running were not representative. It is very, advantageous to take a baseline year of 2012 and then look at reductions out in 2030 and—as you do that because you already have a head start there.

Senator JOHNSON. Well, advantageous to who?

Mr. RAMME. To the regulator.

Senator JOHNSON. EPA?

Mr. RAMME. And so that is why that really isn't, we feel—

Senator JOHNSON. Mr. Meyer, you had a slightly different thought on that.

Mr. MEYER. I do. But I will preface it by saying I am not an expert in this, and Mr. Ramme knows quite a bit.

I made two points. One is, yes, if you had used 2005, a maybe advantageous base, but you have had to make more major reductions. And the estimate is half the companies of the utilities in the Nation would be complaining more than they are now, including some in the State of Wisconsin.

I mean, while I was not involved in studying the baseline year for this, you can never pick a perfect baseline year. By definition, it is arbitrary and depends where you are as an individual company or a State. You may have a State that is in a slump, be treated differently, and some States roaring. So there is never a perfect number.

In 2005 this would have resulted in, we believe, more complaints by utilities with regard to it.

Now, the other thing that I think is important is to have the baseline year, but also, under the State plan—and I know Bruce and some other companies made reductions during the 2005, 2012. And while that isn't taken into account in the baseline year, it can be taken into account in the compliance plan by the State of Wisconsin. And the State can adjust it saying this utility did quite a

bit before then, so we are not going to impose as much. There is that kind of flexibility in the law—or in the regulations to allow those judgments be given credit. Is it perfect? No.

One thing that really concerns me about this rule is I am sure there could be a better rule than this, a better plan, but no one else is laying one out there. We have a climate change problem in this world. We need to deal with it. And I give credit to the EPA for doing it. It may not be perfect, but we need one.

Senator JOHNSON. OK. Well, what I would like to do is give everybody an opportunity and just kind of wrap up the hearing and spend about a minute—I do not want you waxing on too long here. I want to respect everybody's time because people have been very patient. But if you have something that you really want to reveal or talk about that has not been either asked or you did not get an earlier opportunity—

So we will start with you, Ms. Breuer.

Ms. BREUER. Yes. I will just reiterate that, General Schimel and the State of Wisconsin feels that it is in the best interests of Wisconsin citizens to fight this type of regulatory overreach, not because we do not like the environment, but because we do think that it is State regulators and Wisconsinites who know our energy system best, who know our land best, and know the best way to use it. And we are the largest overreach we have seen in decades. And we are going to do everything we can from a litigation perspective to stop that.

Senator JOHNSON. Thank you, Ms. Breuer. Mr. Vebber.

Mr. VEBBER. Yes. That was well said. And I would say that in Wisconsin, it has been said today that we make things. We are a manufacturing heavy State. We have members who use over a million dollars a month in energy. When you drive up the cost 10 to 25 percent of that, that is a serious expense that is going to drive jobs out of our State. Manufacturers make up .15 percent of the total customer base, but they use a third of the energy. If those manufacturers start leaving, that means that the rest of the energy costs in the State are going to go up dramatically on families and other businesses. And that is going to be devastating.

So thank you, again, for allowing us to testify today, and I appreciate it.

Senator JOHNSON. Mr. Holte.

Mr. HOLTE. Well, I guess I would come back to the point I made earlier about the vagueness of the rule and the opportunity for it to change and be interpreted differently down the road with no opportunity for us to change that. And that vagueness gives us a great sense of discomfort.

Senator JOHNSON. Mr. Schienebeck.

Mr. SCHIENEBECK. Like what I used to be, many of our members are independent businessmen. And we comply with everything we can comply with obviously. We care about the trees and the forests more than anybody. Because if you are a logger, the last thing you want to do is run out of trees to cut. And we have more trees now than we have ever had. I mean, we are well beyond the late 1800s and 1900s. And even then we did not actually run out of trees.

And as an independent businessman, we are seeing more and more costs added on, and we have nowhere to pass those costs on. I mean, the utility company, they can raise my rates.

If I am buying equipment when we are right in the final stage of a Tier 4 engine. That added \$18,000 on to the cost of the machine. Now we are talking Tier 5 engine, and that is going to be probably \$30,000 onto the cost with such a minute—you talked about the teaspoons before. This would be a thimble for the gain of the cost. Quite honestly, we cannot afford to pay the costs anymore of these overreaching rules that have no benefit to them.

Senator JOHNSON. Again, those trees did grow back, and they did have to have some CO₂ to grow back.

Mr. SCHIENEBECK. Absolutely. And we had a Council on Forestry meeting today. And we just had another lesson about CO₂. And we have trees, and they are absolutely (inaudible).

Senator JOHNSON. I could not help myself. Mr. Ramme.

Mr. RAMME. Well, I guess the last comment I would make is certainly to acknowledge that the legal challenges need to run their course. And hopefully they can occur in a timely fashion. And we have to get back to a balance of, environmental protection and considering the economy.

Senator JOHNSON. OK. Mr. Meyer.

Mr. MEYER. I started working for the Department of Natural Resources before the Clean Water Act, and before the Clean Air Act. And you could not eat the fish here in Stevens Point. You could not swim the rivers. Snowbanks were covered with soot and coal. And it did take Federal intervention to, in fact, cleanup those waters and lakes. We have done a good job, and the citizens have done a good job.

We need Federal intervention on climate change. And this rule does it for the first time.

Senator JOHNSON. Thank you, Mr. Meyer, for your efforts. And again, we agree on so much because we are here in Wisconsin, we love our environment, and we want to keep it clean.

So, again, I just want to thank all the witnesses for your thoughtful testimony, for taking the time, for your thoughtful answers to my questions.

I certainly want to thank UW-Stevens Point here for opening up this room. It is a beautiful facility. We appreciate that.

And in particular, I want to thank Bill Rowe and his team and campus security.

We want to thank all of the members of the audience in being very respectful, in taking the time to hear everybody out.

This has been a good hearing. This is just a first step. We will, have a hearing in Washington D.C., and we will get the EPA in there, and we will hear their side of the story. And hopefully, they will also listen to some of these, I think, very legitimate concerns by business interests. This is going to affect our economy in some way, shape, or form. We can argue on exactly how much because it is just very difficult to calculate these things in perspective and even retrospectively. But it does have an economic impact, which is why this is of interest to this Committee.

So again, I want to thank everybody for their attendance and their participation.

The hearing record will remain open for 15 days until November 28 at 5 for the submission of statements and questions for the record.

This hearing is adjourned.

At 2:41 p.m., the Committee was adjourned.

A P P E N D I X



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"The Impact of Federal Regulations: A Case Study of Recently Proposed Rules"

Committee on Homeland Security and Governmental Affairs
Testimony of Assistant Deputy Attorney General Delanie Breuer
Wisconsin Department of Justice

Good afternoon Chairman Johnson, Ranking Member Carper, and members of the committee. Thank you for the opportunity to provide testimony on behalf of Attorney General Brad Schimel and the state of Wisconsin.

The health of Wisconsin's economy rests on the back of manufacturing, food processing, pulp and paper, and agriculture. Together, these industries make up the heart of our state and all of them are in danger due to the EPA's effort to usurp state control over the natural resources that are necessary for Wisconsin's continued growth.

Environmental stewardship is important to all of us, and everyone see the value of responsible use of natural resources. But in order to leave our future generations better off than ourselves, we must find the balance between protecting our environment and protecting our economy.

I'm here on behalf of Attorney General Brad Schimel to discuss the legality of two specific initiatives: the Waters of the United States rule and the EPA's "Clean Power Plan." But we cannot discuss these two overarching rules without additional context.

Under President Obama, the EPA has hammered business and industry with regulations at a historical. There have been multiple National Ambient Air Quality revisions including particulate matter, ozone, NO₂ and SO₂, the Cross State Air Pollution Rule, rules regulating water intake at power generating facilities, rules further limiting mercury and other chemicals from those same facilities, rules regulating coal combustion residuals, and rules regulating effluent from generators. This was all well before the two regulations we are addressing today.

But these two regulations in particular are the broadest expansion of EPA authority we've seen to date. One gives EPA control over nearly every stream and tributary in the state, and the other allows EPA to manipulate and control the entire country's electric grid. The industries important to Wisconsin may not survive this onslaught.

Attorney General Schimel has promised to do all he can to protect Wisconsin's economy by fighting this type of federal overreach. Since he took office in January, Wisconsin has

joined four separate law suits challenging the “Clean Power Plan,” a law suit challenging the Waters of the United States rule, and is contemplating even more litigation to prevent the federal government from taking more control of our state resources through EPA regulation.

The Waters of the United States

The Waters of the United States rule, or WOTUS, is an attempt by EPA to control more bodies of water with federal regulation. The Clean Water Act requires anyone seeking to discharge materials into the “Waters of the United States” to obtain a permit from the EPA or Army Corps of Engineers. Discharge is not only traditional pollutants, but can also include rock, sand, and dredge material.

The rule that is currently being challenged overhauls the definition of the “Waters of the United States.” It defines three categories of water: primary water, waters adjacent to primary waters, and waters with a significant nexus to primary waters. Primary waters are defined as any interstate waters and wetlands. The rule maintains jurisdiction over primary waters, which is unchanged from past practice. However, it also establishes *per se* jurisdiction over waters adjacent to primary waters.

One of the most troubling additions to the definition of Waters of the United States is that of “adjacent waters” or neighboring waters. This expands EPA authority to water within 100 feet of the ordinary high water mark of navigable waters, areas within the 100-year floodplain and within 1500 of the ordinary high water mark of navigable waters, and waters within 1500 of the ordinary high water mark regardless of whether they are actually connected in any way to the related navigable waters. EPA’s expanded authority is even greater than the Wisconsin DNR’s in that the DNR must show some connectivity to groundwater, surface water, or wetlands in order to regulate these types of waterways. Practically speaking, the types of waters subject to *per se* or potential EPA regulation include ditches, ponds, and streams that may only flow during or after heavy rains but are usually dry, and to the 100 year flood plain which is likely dry 99 out of 100 years. It also includes any ponds, natural or manmade, on any property, public or private, within those specified boundaries.

There are some practical problems with the rule’s application as well. First, it leaves ambiguous the state’s jurisdiction over water with a “significant nexus” to primary waters. “Significant nexus” is defined as water, including wetlands, either alone or in combination with other similarly situated waters in the region, significantly affecting the chemical, physical, or biological integrity of a water.” EPA has justified this rule by claiming that it will reduce the number of case-by-case evaluations, but in fact, this definition not only requires a case-by-case analysis of a body of water to determine if it has a significant nexus before the property owner can apply for permits, but it also broadens the definition to a point that will allow the EPA to regulate any water anywhere by determining it has a ‘significant nexus’ to a navigable water.

Notably, the new WOTUS rule impacts all property owners, public and private, as well as all Wisconsin industry, but particularly agriculture. The rule adds more red tape and barriers to practical land use by requiring more permits, and in many cases, duplicative state and federal permits. There is no question that all farmers will be spending more time working with engineers and less time farming under this rule. Worse, they will be spending more of their hard-earned dollars working with attorneys and compliance experts instead of reinvesting those profits in their land and buying equipment to increase productivity.

Under General Schimel, Wisconsin has joined the fight against this federal regulatory overreach. The Clean Water Act gives EPA the authority to regulate “navigable waters.” The average citizen might find this issue slightly ridiculous. He or she probably thinks that the common sense definition of “navigable water” is one down which you could drive or paddle a boat. Of course a seasonal stream that only runs during periods of heavy rain cannot be considered navigable under any reasonable construction of that term. And a small pond on private land with no connection to a major waterway is certainly not within the definition of “navigable waters” under a common-sense definition. The average citizen and his or her common sense approach is correct. Legally, the rule exceeds the bounds of the Commerce Clause by asserting per se or potential jurisdiction over water that has little or no connection to interstate navigable waters. This redefinition cannot be called anything other than a power grab by the federal government.

Worse still, the rule exempts “waters being used for established normal farming, ranching and silviculture activities” from per se regulation. At first, this seems like good news. It seems to say the EPA will not automatically regulate water used by our farmers. But what it really does is force farmers’ permits to be evaluated on a case-by-case basis, meaning uncertainty and likely harsher regulation of farm tributaries, impacting not just corporate farms, but small family farms that have existed in Wisconsin for decades, or even centuries.

This type of overreach with respect to the Clean Water Act has been attempted and rejected multiple times. Most notably, the Supreme Court rejected the Army Corps’ and EPA’s authority to regulate non-navigable, intrastate waters not significantly connected to navigable interstate waters. This seems like a clear holding that the agencies are ignoring by promulgating this new definition.

Currently, the WOTUS rule is stayed pending litigation due to several lawsuits that were filed after the rule was published by the EPA. However, there are ongoing litigations over the jurisdiction of the court issuing the stay. A reversal of the injunction would irreparably harm Wisconsin and many other states. Wisconsin will continue to support litigation efforts to protect our state.

The “Clean Power Plan”

The “Clean Power Plan” is the centerpiece of the Obama administration’s intended environmental legacy, but the repercussions will devastate Wisconsin’s economy for little or no benefit. At its core, the “Clean Power Plan” is a cap-and-trade plan in disguise.

At this point, the details of the rules are relatively well known by industry and utilities, as well as the legal world. There are three parts to the “Clean Power Plan”: 111(b) regulating carbon dioxide emissions from new coal- and gas-fired power plants, 111(b) regulating carbon dioxide emissions from modified or reconstructed plants, and 111(d) regulating carbon dioxide emissions from existing plants. All three versions were published on October 23rd of this year.

The Clean Air Act requires EPA to set standards for new sources in a given source category before it can set standards for existing sources in that same category. In other words, 111(b) is a necessary precursor to 111(d). For this reason, and to preserve the ability to rely on coal in the future as part of a balanced energy portfolio, Wisconsin has joined a law suit to challenge the 111(b) new source performance standard.

The rule sets limits for new natural gas generating facilities at 1000 lbs/MWh and for coal generating facilities at 1400 lbs/MWh. The limit for coal plants is most troubling. It requires approximately 20% of the carbon produced to be captured and permanently stored underground through carbon capture and sequestration, or CCS. There is no off-the-shelf, add-on technology that can eliminate carbon from an emissions stream like there are for other noxious pollutants. In fact, even the newest, most efficient ultra-supercritical technology cannot meet the standard without CCS. That cutting edge technology emits about 1700 lbs/MWh, 300 lbs over the limit. In simplest terms, the CPP is designed to end coal-fired power generation in the United States. The devastating impact of this cannot be overstated as it applied to Wisconsin’s manufacturing sector and to those who live on fixed incomes.

Wisconsin joined 23 other states to challenge this portion of the “Clean Power Plan” on November 3rd. While we may not have plans to build a new coal-fired generator in the near future, it’s important to keep coal on the table as a fuel option. The litigation is also important because success a successful challenge will also preclude the implementation of 111(d) for existing sources.

The legal argument against 111(b) for new sources is sound. The Clean Air Act requires a standard to reflect “the degree of emissions limitation achievable through the application of the best system of emissions reduction which (taking into account the cost of achieving such reduction and any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.”¹ The challenging states will argue that CCS has not been “adequately demonstrated.”

¹ 42 U.S. Code § 7411(a)(1).

CCS is not a common or a proven technology. There are just over a dozen CCS projects worldwide and only one (in Saskatchewan, Canada) is connected to an operating power plant. The plant that was intended to be the poster child for the technology in the U.S., Mississippi Power's Kemper County facility, has faced nothing but problems. The total cost of the plant to date is \$6.4 billion, almost 64% (or \$4 billion) over budget. It is also two years behind schedule.

Since CCS has not been "adequately demonstrated" and even the most technologically advanced coal-fired plants cannot meet the standard without CCS, the rule is more stringent than allowed by the Clean Air Act.

Even more troubling is the 111(d) standard for existing natural gas- and coal-fired generating facilities. While 111(b) sets a standard for each type of plant regardless of location, 111(d) sets a standard for a state, basically treating an entire state as a source. The states' goals are based on current generation mix and emission rates, and a convoluted formula of renewable potential, retirements, natural gas capacity, and generic estimates of efficiency upgrades.

Wisconsin is in the crosshairs of this rule in a way unlike any other state because of our manufacturing-based economy, our low renewable potential, and our current reliance on clean, reliable coal plants. Since 2000, we have invested \$11.6 billion in reducing carbon in our utility industry, but we are still expected to make one of the largest reductions of any state under the final rule.

The states fighting this portion of the "Clean Power Plan" have not held back. There have been three separate attempts to stop what is clearly illegal and prevent the states and utilities from spending valuable resources to begin compliance planning. Currently, Wisconsin has joined 25 other states to challenge the final, published rule.

Wisconsin has played a significant role in the litigation since January. We continue to provide technical support both informally and through our regulators' declarations. We believe the EPA is legally prohibited from promulgating this rule under the language of the Clean Air Act because the EPA already regulates these same plants under a different section of the Act. We also believe that the EPA is exceeding its authority because the rule effectively sets state energy policy by regulating the entire grid rather than a specific source of emissions. In a nutshell, the EPA is telling the states that the best way to reduce emissions from fossil fuel plants is to simply stop using it. We refuse to accept that this is what Congress intended with the clean air act – to force the shutdown of clean, reliable facilities that have not reached the end of their useful life.

Moreover, the rule is tailored to encourage a cap and trade program, the same type of program rejected by congress but promised during President Obama's campaign. While the EPA claims to give states flexibility to comply, it virtually impossible for states like Wisconsin to reach their goal without depending on credits from other states. Our manufacturers, and ultimately our consumers, will pay for that.

Currently, the parties are briefing a motion for stay made by the states challenging the rule. Absent a stay, we have no choice but to begin compliance planning. Our fear, of course, is that we will begin down an irreversible path with the decision we make while waiting for final adjudication. Of course, much like the recently litigated MATS rule, the EPA will be content with forcing states to make unnecessary investments while litigation is pending even if the rule is ultimately deemed illegal.

The great irony of this rule is that its impact will, at best, be minimal, and at worse, be the opposite of what EPA claims to want. By its own calculation, the impact of this rule over the next several decades is so minimal it is practically insignificant. But if we consider the very real consequences of price spikes, it is more than likely that global carbon emissions will increase as a result of the rule. Energy price spikes will reduce manufacturers' margins to a point that they will be forced to relocate. And when they do so, it's not to a neighboring state but to a different country – a country like China, or India, or Mexico, where cheap, reliable coal is plentiful, and where toxic emissions like SO₂ and mercury are not controlled at all. To the extent that the demand for manufactured products is maintained after the US economy is permanently altered by this regulation, the countries to which these manufacturers will continue increasing their carbon emissions as well as their economies, while we suffer. Those decisions to move overseas are not easily reversed, but if the rule is not stayed during litigation, those decisions will be imminent.

Conclusion

The legal and constitutional analyses of these rules are important. But more important is the impact on the citizens of our state. Many citizens do not understand the impact of these rules. More burdensome water regulation means farming becomes more expensive and so do the products that those farmers produce. Higher costs make it more difficult to compete with importers, and reduce the already small profits of most farmers. It makes manufacturers less competitive and increases the costs of their products for the end use consumer, as well.

Higher energy prices add another layer of burden, which may ultimately force Wisconsin companies to leave. Wisconsin utilities are regulated entities, and large energy users such as the paper mills and food processors pay for a disproportionately high amount of the infrastructure that brings energy to your home as well as their facilities. As they leave, the same costs must be collected, but from fewer customers, which accelerates the rate at which residential electric bills will increase. By the time residential customers see these double digit increases in their electric bills and food prices, we will be too far down the path to reverse course. Those consumers will not blame EPA for the rate hikes. They will blame manufacturers, utilities, farmers, and administration in office at that time.

Much of Wisconsin's industry feels pressure from consumers to be 'green' and take measures to protect the environment, and no one is arguing that the environment is not

important. However, the result of these two rules is not cleaner air or water, but less control over our state's natural resources. The air and water in Wisconsin is cleaner than it has ever been, and that was accomplished without illegal intervention from the federal government.

There has been a lot of rhetoric thrown around about these two EPA regulations, but the impact of the rules on our economy is not being exaggerated – it will be detrimental and it will be irreversible. These two regulations, along with the others promulgated over the last seven years, result in a regulatory power grab by the federal government like we've never seen. We must educate the citizens of our state on these consequences so they can make informed decisions.



November 12, 2015

Via Electronic Mail Only to:
laura_kilbride@hsgac.senate.gov

The Honorable Ron Johnson
 Chairman, Senate Committee on Homeland Security and Governmental Affairs
 Washington, D.C. 20510-6250

RE: Written testimony for the Committee on Homeland Security and Governmental Affairs
 hearing on November 13, 2015 in Stevens Point, Wisconsin

Chairman Johnson:

Thank you for the opportunity to testify. This written testimony is being submitted in advance of the hearing in Stevens Point, Wisconsin, on November 13, 2015, in compliance with committee rules.

Introduction

My name is Lucas Vebber; I am the Director of Environmental and Energy Policy at Wisconsin Manufacturers & Commerce (WMC). WMC is Wisconsin's chamber of commerce and manufacturers' association. We have nearly 4,000 members throughout the state of all sizes and across all sectors of the state's economy. One in four private sector employees in Wisconsin works for a WMC member company. WMC is dedicated to making Wisconsin the most competitive state to do business.

The EPA rules we are here to discuss today are broad and unprecedented expansions of federal power and will impact a wide variety of our members in very negative ways. Cost estimates put these rules amongst the most costly regulations ever created. They were promulgated without a single vote of Congress. These rules will fundamentally change the regulatory environment here in Wisconsin and throughout the United States and will certainly have vast consequences for our economy for a generation, costing our state tens of thousands of jobs, and weakening our economy at a time we can least afford it.

On behalf of WMC, thank you for taking the time to investigate the real world impacts of these two rules. There is a lot of hyperbole and misinformation as to what exactly these two rules will do, and we appreciate the opportunity to provide the committee with an analysis of the impact these regulations will have if they are allowed to go forward.

Background on Business in Wisconsin

Here in Wisconsin we make things. Wisconsinites take great pride in being a world leader in producing a variety of goods, whether agricultural or manufactured. Our workforce of highly skilled professionals is renowned around the world for our ability to produce everything from fine cheeses to heavy mining equipment.

Last month was manufacturing month here in Wisconsin. Manufacturing is consistently amongst our top employment sectors here in Wisconsin. Manufacturing was responsible for over \$55 billion worth of economic output last year alone. The average salary in the manufacturing sector is \$54,400 per year which is \$10,000 higher than the average pay for Wisconsin private-sector workers. Additionally, workers in the manufacturing sector in our state are more likely to receive health insurance benefits than their counterparts in other areas of our economy. To say manufacturing drives our state would be an understatement. And it's our state's manufacturers and agriculture industries that will be especially hard hit by these rules. Whether through indirect regulatory compliance costs or directly driving up the cost of business through energy rate price increases – these rules will have a significantly negative impact on businesses here in Wisconsin.

Given the legal and agricultural experts who will be providing testimony at today's hearing, my focus will largely be on the impacts these rules will have on our state's manufacturing industry and impacts on consumers. While my primary focus today is to discuss how these rules will impact our home state of Wisconsin, I will also address my comments to the rules as they apply generally.

Waters of the United States (WOTUS)

The crux of this rule hinges on what is defined as a state water and what is a federal water. This rule proposes to fundamentally alter the definition of "Waters of the United States" in a way that would result in a significant expansion of federal regulatory authority under the Clean Water Act (CWA). Federal jurisdiction under the WOTUS rule would be expanded to cover a wide variety of waters traditionally unregulated by the CWA, and left to the states or local governments. The rule contains a great deal of poorly defined terms that will, presumably, be left up to agency interpretation, and needlessly subjects businesses and private property owners to a whole host of new regulatory hoops that they must jump through.

One of the stated goals by EPA in creating the WOTUS rule was to ensure "that waters protected under the Clean Water Act are more precisely defined, more predictably determined, and easier for businesses and industry to understand."¹ Ironically, the actual rule goes in the opposite direction; creating uncertainty and confusion every step of the way. The uncertainty created by this and the potential for an increased regulatory burden is problematic not only for manufacturers but for agricultural producers, land owners, as well as local and state governments.

¹ "What the Clean Water Rule Does," Environmental Protection Agency, available at <http://www2.epa.gov/cleanwaterrule/what-clean-water-rule-does>

i. What it means for Wisconsin

It is not very clear at all what benefits this rule would have to a state like Wisconsin. Our state, more so than most other states, more broadly defines “waters of the state” in our laws and regulations. That is, we already cover, at the state level, a good deal of the waters that the federal government is proposing to regulate federally. For example, Wisconsin DNR Secretary Cathy Stepp noted in comments to EPA that Wisconsin “remains one of the few states that currently regulate isolated, non-federal wetlands...”² This rule results in a duplicative and confusing regulatory framework that will certainly be difficult for businesses to navigate – far from creating the “certainty” that EPA has promised.

Our state has a long history of embracing our outdoor heritage and natural environments. Whether for recreation or sport Wisconsinites take great pride in our lakes, rivers and streams. The rule creates a duplicative regulatory framework which creates a great deal of confusion for Wisconsinites who are seeking to comply with the law. Under WOTUS, for the first time ever, roadside ditches and ephemeral streams would be subject to federal CWA jurisdiction in our state. Given the far-reaching nature of the proposed rule, manufacturers in Wisconsin face a seemingly unlimited number of permitting and regulatory challenges under this new framework. This uncertainty makes it difficult for our employers to site a new facility in our state or expand and grow their existing operations.

WOTUS does nothing to improve environmental regulation in Wisconsin. There will be no new environmental benefits and adding new layers of regulatory burdens will only cause confusion and lead to increased compliance costs on Wisconsin employers, harming our economic viability. Given the lack of any tangible benefit, and the significant cost possibilities, it seems unconscionable that such a rule would be allowed to move forward.

ii. Procedural Concerns

This rule was developed with little, if any, consultation with the various states. Wisconsin was not contacted by EPA while they were developing this rule. As our DNR noted, “As co-regulators of our state’s water resources, we believe that a thorough and robust consultation is both warranted and imperative for any rule package to move forward.”³ Certainly that did not happen here, and the result is a confusing and duplicative federal rule package that will have wide-ranging impacts for businesses and private property owners.

Further, this rule was implemented without consulting Congress. The costs and resulting duplicative layers of regulation that this rule created certainly could have been limited if not completely avoided with any level of engagement with elected policymakers.

Fortunately for businesses here in Wisconsin and nationwide, the sixth circuit issued a nationwide stay on this rule while litigation moves forward – giving a brief reprieve from what is surely one of the largest expansions of federal authority to ever come to be without

² “Comments on Proposed Waters of the United States,” Cathy Stepp, Wisconsin DNR Secretary, Letter to EPA, November 14, 2014, available at regulations.gov

³ See *supra* “Comments on Proposed Waters of the United States”

Congressional action. Additionally, we'd like to thank the Chairman and the bipartisan majority of U.S. Senators who supported S. 1140 – the Federal Water Quality Protection Act – when it came before the Senate just a week ago.

Clean Power Plan (CPP)

The CPP requires states to achieve significant reductions in CO₂ output from fossil-fuel based power plants by the year 2030. This 1,500 page rule provides states with mass-based (total tons emitted statewide) or rate-based (pounds per megawatt hour generated) measures as a way to determine compliance. States are to use three “building blocks” to develop plans to achieve such compliance.

States are required under the CPP to submit a plan to reach these goals by September of 2016. Alternatively, if states can show they are making substantial progress on a state implementation plan (SIP) by that date, they can seek a two-year extension to file their final plan. If states do not submit a plan or fail to show substantial progress by September 2016 they will be subject to a federal implementation plan (FIP). This plan is not yet final, as EPA is accepting public comment until January of 2016. It is expected that a final federal implementation plan will not be available until next summer, leaving very little time before some states may be forced to begin implementation.

This timeline is completely, and perhaps deliberately, unreasonable. This is why a majority of states have filed litigation *against* the rule and, similar to the WOTUS rule, are seeking to stay implementation of the CPP while the courts consider that challenge. For the reasons below, this plan is problematic and will have a devastating impact not only here in Wisconsin but throughout the nation. I will layout the specific impacts this rule is expected to have here in our state, and then discuss some of the broader policy concerns with the CPP that will impact us nationally.

i. What it means for Wisconsin

Here in Wisconsin we are facing a higher than average emission reduction target. Wisconsin is a heavy coal user – generating roughly 60% of our state’s baseload power from coal sources.⁴ It has provided our state with a reliable, efficient, and cost-effective means of generating electricity. Our state has made significant investments in coal technology over the past several decades, while at the same time our air quality has improved dramatically by virtually any measure.

a. State Goals

Despite our continuously improving clean air and our ability to consistently generate reliable and affordable energy, the EPA has decided we must do more. Depending on if our state complies with a mass-based or rate-based approach, we would be forced to achieve a 34% or 41%

⁴ “Wisconsin Energy Facts,” Institute for Energy Research, available at <http://instituteforenergyresearch.org/media/state-regulations/pdf/Wisconsin.pdf>

reduction in CO₂, respectively.⁵ There is a great deal of uncertainty surrounding the CPP but virtually everyone agrees that to meet EPA's goals, our state will need to invest heavily in renewable energy resources. Economics 101 tells us that new construction means new costs. New costs get passed along to energy users and this, in turn, drives up the cost of doing business. This makes our members less competitive in an every-changing global marketplace.

b. 2012 Baseline

Using 2012 as a baseline is arbitrary and needlessly punishes Wisconsin. Natural gas prices in 2012 were low compared to other years, resulting in lower-than-normal coal power usage. Emission rates were thus lower than year than almost any other. Using a single year as the baseline, much less using a year that was an outlier amongst all others, unfairly and unreasonably harms our state. EPA should have used a 3 or 5 year average to get a real picture of CO₂ output in the various states.

c. Increased Costs, Less Competitive Economy

Affordable energy is essential to any economy. This is especially true for Wisconsin, in which, as I said earlier, manufacturing is consistently one of our top business sectors. Wisconsin's manufacturers accounted for only 0.15 percent of all electricity customers in Wisconsin in 2012, but consumed about 33 percent of total electricity. For industrial users in Wisconsin, the average monthly electric bill is around \$31,000. Some of our members use \$1 million or more in a given month. The increases to come as a result of the CPP will make our state less viable, not only nationally, but against ever-growing international competition.

Energy costs are a significant consideration for businesses looking to establish a new location or expand an existing one; we hear this time and time again. As these costs go up, the CPP will result in lost jobs in our state. It is difficult to predict exactly how many jobs, as Wisconsin has not yet developed a SIP and the FIP will not be finalized until next summer. However a Wisconsin-specific study by Suffolk University's Beacon Hill Institute and the Wisconsin-based John K. MacIver Institute for Public Policy found that nearly 21,000 jobs would be lost over the next 15 years.⁶ Further, our state would see a drop in disposable income of \$1.82 billion over that same time span.⁷ It's important to note that this study was conducted on the draft rule, and that the final rule actually got more stringent for Wisconsin – which would mean even more jobs loss and even less disposable income.

d. Reliability Concerns

Finally, the CPP will make electric delivery in Wisconsin less reliable. The Public Service Commission of Wisconsin thoroughly studied and modeled the draft CPP rule over the past year – and although the rule did change, the results of their modeling are still very informative. The

⁵ "Clean Power Plan: State at a Glance," Environmental Protection Agency, available at <http://www.epa.gov/airquality/cpptoolbox/wisconsin.pdf>

⁶ "The Economic Effects of the New EPA Rules on the State of Wisconsin," Beacon Hill Institute/John K. MacIver Institute for Public Policy

⁷ *Id*

CPP will require Wisconsin to rely more heavily on renewable energy. Renewables are less reliable – if the sun is not shining as bright or the wind dies down, other generation sources have to ramp up. Natural Gas is really the only source that is able to ramp up and down quickly enough to adjust to the demands of the grid. However, the final rule makes this nearly impossible. As PSC Chairperson Ellen Nowak noted as part of the filing for an extraordinary writ when the final rule was announced in August, “the Final Rule encourages natural gas plants to operate at capacities of 75% or higher, leaving very little capacity that is free to respond to rapid demand changes on the grid.”⁸

As the coming weeks and months unfold, we will learn more about the specifics of how Wisconsin intends to deal with the CPP. Right now there is a great deal of uncertainty as to what the exact impacts will be. Still, as I noted, there are a few things that we know with certainty: The CPP will fundamentally alter Wisconsin’s energy generation facilities in ways that will drive up costs for consumers and negatively impact reliability. These factors will make our businesses, especially high-energy using manufacturers, less competitive against both national and international competition, costing us jobs. Higher energy costs will also rob our citizens of disposable income, resulting in a weaker economy overall. The CPP is very bad for Wisconsin.

ii. Cost/Benefit Analysis

EPA has consistently provided an over-the-top and somewhat incoherent cost-benefit analysis when talking about the CPP. By EPA’s own estimates, this rule will cost the American economy billions of dollars. EPA estimated a cost of \$7.3 billion to 8.8 billion per year by 2030 – although they offset this with a quantification of benefits to the climate and public health of between \$55 billion and \$93 billion per year. EPA claims for every \$1 of cost, the public will see \$7 in benefits.⁹

EPA has a history of providing overly-positive cost-benefit estimates or even completely ignoring the economic impacts of their regulations; something the Supreme Court of the United States chided them for while striking down a different regulation just last summer.¹⁰ A recent study completed by NERA Economic Consulting found this rule will cost Americans up to \$292 billion, and is expected to raise energy prices in 47 states, with 28 states facing increases of 20 percent or more.¹¹ These numbers are astronomical and would wreak havoc on our economy.

iii. Procedural Concerns

As I have noted previously, this rule was put forward without a single vote in Congress. In fact, like the WOTUS rule, the only action Congress has taken on this issue is a bi-partisan effort to

⁸ “Declaration of Ellen Nowak, Chair, Wisconsin Public Service Commission,” attached to Petition for Extraordinary Writ, In Re West Virginia, et. al., dated August 7, 2015, Paragraph 14.

⁹ “FACT SHEET: Clean Power Plan Benefits,” Environmental Protection Agency, available at <http://www2.epa.gov/cleanpowerplan/fact-sheet-clean-power-plan-benefits>

¹⁰ See *Michigan v. Environmental Protection Agency*, 576 U.S. ____ (2015).

¹¹ “Energy and Consumer Impacts of EPA’s Clean Power Plan,” NERA Economic Consulting, available at <http://www.americaspower.org/sites/default/files/NERA%20CPP%20Final%20Nov%207.pdf>

stop it.¹² A rule of this magnitude, which will significantly and undeniably alter the American energy landscape for generations, should not have been crafted by regulators. This type of change absolutely deserved Congressional scrutiny and debate. These kinds of decisions require much more public input than is available through an agency rulemaking process.

iv. Air Quality and Health Impacts

Much has been made by EPA in their public statements regarding the potential health benefits of the CPP. First, I would note, the National Ambient Air Quality Standards (NAAQS) exist to ensure air quality – that's the appropriate place to ensure healthy air. Second, there has been shown to be a significant correlation between wealth and health, and the economic impacts of this plan could potentially have a detrimental impact on the health of Americans.

a. NAAQS

The NAAQS exist to define clean air. There are currently six criteria pollutants regulated by the NAAQS: Carbon Monoxide, Lead, Nitrogen Dioxide, Ozone, Particulate Matter, and Sulfur Dioxide. These criteria pollutants are set by the EPA according to sections 108 and 109 of the Clean Air Act:

Those two Clean Air Act sections require the EPA Administrator (1) to list widespread air pollutants that reasonably may be expected to endanger public health or welfare; (2) to issue air quality criteria for them that assess the latest available scientific information on nature and effects of ambient exposure to them; (3) to set primary NAAQS to protect human health with adequate margin of safety and to set secondary NAAQS to protect against welfare effects (e.g., effects on vegetation, ecosystems, visibility, climate, manmade materials, etc); and (5) to periodically review and revise, as appropriate, the criteria and NAAQS for a given listed pollutant or class of pollutants.¹³

CO₂ is not a criteria pollutant, nor should it be. Every person in this room is producing CO₂ right now. To the extent that EPA feels the definition of clean air needs to be changed to protect public health, they ought to work within the NAAQS, not creating a whole new level of regulation for power plants that is simply unworkable – as they have done here.

b. Health Impacts

EPA estimates that the CPP will result in the avoidance of 2,700 to 6,600 premature deaths and the prevention of 140,000 to 160,000 asthma attacks in children.¹⁴ In announcing the Clean Power Plan, EPA Administrator McCarthy said on June 2, 2014, “The first year that these

¹² See “Clean Power Plan immediately faces 24-state lawsuit, bipartisan challenge in Congress,” Washington Times, October 23, 2015, available at <http://www.washingtontimes.com/news/2015/oct/23/two-dozen-states-file-lawsuit-against-clean-power-/?page=all>

¹³ “Air Quality Criteria for Lead (2006) Final Report,” Environmental Protection Agency, available at <http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=158823>

¹⁴ See *supra* “FACT SHEET: Clean Power Plan Benefits”

standards go into effect, we'll avoid up to 100,000 asthma attacks and 2,100 heart attacks—and those numbers go up from there.”¹⁵

These numbers certainly have shock value, but it is not clear how they were developed, and whether they actually account for the fact that the CPP itself, under a rate-based approach, could actually lead to higher CO₂ levels being emitted in the United States (discussed *infra*). Further, from 2005 to 2013, CO₂ emissions from energy-related sources are down 10%,¹⁶ which begs the question – if emissions were being reduced without the CPP, why do we need it at all? Further, despite the fact that this rule handcuffs American power generation, countries around the world continue to build significant coal-power infrastructure. Certainly any CO₂ reduction realized here as a result of the CPP will be more than offset globally by the expansion of coal power in developing nations.

Further, insofar as the CPP will result in lower disposable incomes for American families, it could actually have the opposite impact on overall health. As one report notes, “Vulnerable, low-income families, who spend a higher percentage of their incomes on energy, will be harmed the most—and could be forced to forgo necessities such as food, medical care, and prescription drugs. By forcing higher energy prices on American families, the rule will end up making the poor poorer and the sick sicker.”¹⁷

v. No Actual Climate Benefit

It is also important to note that by EPA’s own assertions this plan will have little to no actual impact on climate change or air pollution levels globally. In fact, EPA Administrator McCarthy has said that the real value of the CPP is “in showing strong domestic action, which can actually trigger global action.”¹⁸ Stated another way, “let’s handcuff American industry and hope the competing businesses in other nations don’t try to use their newfound, and EPA-created, competitive advantage.” This is simply unacceptable.

House Science Chairman, the Honorable Lamar Smith of Texas best summed up the absurdity of the climate change benefits of the CPP:

“EPA asserts that the Clean Power Plan will help combat climate change. However, EPA’s own data demonstrates that is false. This data shows that this regulation would reduce sea level rise by only 1/100th of an inch, the thickness of three sheets of paper. This rule represents massive costs without significant benefits. In other words, it’s all pain and no gain. Under the Clean Power Plan,

¹⁵ “Remarks for Administrator McCarthy, Announcement of Clean Power Plan,” Environmental Protection Agency, June 2, 2014, available at <http://yosemite.epa.gov/opa/admpress.nsf/d0cf6618525a9efb85257359003fb69d/0a8e7164bb15185985257ccb0050c967!OpenDocument>

¹⁶ “U.S. Energy-Related Carbon Dioxide Emissions, 2013,” U.S. Energy Information Administration, October 21, 2014, available at <http://www.eia.gov/environment/emissions/carbon/>

¹⁷ “The Poor and Sick Suffer Under Obama’s Carbon Rule,” Institute for Energy Research, August 13, 2015, available at <http://instituteforenergyresearch.org/analysis/the-poor-and-sick-suffer-under-obamas-carbon-rule/>

¹⁸ “Politifact: Even the EPA says Obama carbon plan will marginally affect climate change, Scott Walker says,” Milwaukee Journal Sentinel, September 21, 2015, available at <http://www.politifact.com/wisconsin/statements/2015/sep/21/scott-walker/even-epa-says-obamas-power-plan-will-have-only-mar/>

Americans will be subject to the constant threat of government intervention. The onslaught of EPA regulations continues.”¹⁹

Further, under a rate-based approach to compliance, states can actually increase overall load and emissions, as long as those emissions are under the goals on a per-megawatt hour basis. That is, the state can potentially increase CO₂ output overall and still hit the target. Given the stated goals of the plan, it seems unclear as to how such a scheme would achieve those goals.

Conclusion

These rules represent a significant overreach of federal authority. For the good of our state and national economies, these rules must be put on hold. We need market-based solutions to continue to drive our economy into the future and provide a reasonable and predictable regulatory environment with affordable and reliable energy for everyone.

Thank you again for the opportunity to submit this testimony to the committee today. I look forward to the opportunity to testify before the Senate Committee on Homeland Security and Government Affairs, and to answering any questions that committee members have.

Sincerely,

Lucas Vebber
Director, Environmental and Energy Policy
Wisconsin Manufacturers & Commerce

¹⁹ “Statement of Chairman Lamar Smith (R-Texas),” Committee on Science, Space, & Technology, September 11, 2015, available at <http://docs.house.gov/meetings/SC/SC11/103919/HHRG-114-SC11-SD004.pdf>

Testimony of
James Holte
President of the Wisconsin Farm Bureau Federation
before the
Senate Committee on Homeland Security and Governmental Affairs

November 13, 2015

I want to thank Chairman Johnson and Members of the Committee for the opportunity to testify on the U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (Corps) final rule to define 'waters of the United States' under the Clean Water Act (CWA) and the rule's impact on farmers.

My name is Jim Holte and I am a farmer from Elk Mound in Dunn County in northwest Wisconsin. I raise beef cattle, corn and soybeans on the same 160 acres that my great grandfather purchased in 1884. Over the years, the farm has expanded to more than 800 acres of crop land, woodlands and buffer zones. Much of the farm is within the Chippewa River's flood plain.

Today, I want to discuss the lack of clarity within this rule, its permit requirements and farming exemptions and blatant overreach by the EPA and Corps.

The notice-and-comment procedure within the federal government's rulemaking process ensures that agencies take honest account of the public's concerns. It also holds agencies to their stated rationales when regulations are challenged in court. When it works as it should, the notice-and-comment process guarantees just what Congress set out to accomplish with the Administrative Procedure Act (APA): a deliberative process of soliciting and considering public input, followed by an agency decision and response to the public's input. This back-and-forth process is essential to sound decision-making and to the integrity of the rulemaking process.

The EPA's handling of the Waters of the United States Rule (a regulation of extraordinary practical and financial importance to farmers and almost anyone else who grows, builds or makes anything in the United States) flouted the APA's notice-and-comment process in three key respects:

- Throughout the rulemaking process, EPA publicly derided concerns expressed about the proposed rule, including the concerns of Farm Bureau and our farmer members. Legitimate concerns of how the rule would affect agriculture, in particular, were subtly twisted and then dismissed as 'silly' and 'ludicrous' and 'myths.' Public statements from the agency's highest officials made it clear that the agency was not genuinely open to considering objections to the rule.
- EPA engaged in an extraordinary public relations campaign to solicit support for (but not informed comment on) the rule. The campaign consisted of non-substantive platitudes about the rule's purported benefits, while omitting any meaningful information about the actual content of the rule, i.e., *what the rule*

would do and what activities would be regulated as a result. The campaign substituted blogs, tweets and YouTube videos for what should have been an open and honest exchange of information between the agency and the public.

- The EPA allowed its own internal timeline to dictate issuance of a proposed rule before the fundamental scientific study underlying the proposal was complete or available for public review. It later dictated issuance of a final rule without providing any opportunity for public comment on major changes made in the final rule. Regardless of the agency's motivations, the integrity of the rulemaking process demands that the public have an opportunity to review and comment on the agency's proposal and on major changes *before* they appear in a final regulation.

This predetermined process culminated in the issuance of a deeply flawed regulation. The true costs and regulatory impact of this regulation has not been seriously considered and will not be known for years. Regardless of whether you supported, opposed or never heard of the rule, you should shudder at how this sets the stage for future controversial regulations to be developed in the age of social media. Agencies must strive to maintain an open mind through the rulemaking process – and to inform, rather than indoctrinate and confuse – even when the policy has become controversial and politicized.

Wisconsin has extensive laws that govern Waters of the State, which the Wisconsin Department of Natural Resources (DNR) monitors and enforces. Under the previous Clean Water Act's definition of 'waters of the United States' any activities or practices that required a permit were already reviewed by the Wisconsin DNR and the Corps of Engineers. This sounds good on paper, but I have an example of how the Corps of Engineers is handling its case load.

I have concerns how this rule will ever be implemented, given how the Corps of Engineers struggles to keep up with its current caseload. Let me share a story. (Please reference the following attachments for copies of all correspondence: *Bragger DNR Receipt of Application Letter, Bragger DNR Application Photos, Bragger DNR Permit Approval Letter, and Bragger CORPS Receipt of Application Letter*)

In 2013, a farmer by the name of Joe Bragger from Buffalo County wanted to install a temporary bridge over a small creek on his farm. His application to the Wisconsin Department of Natural Resources was submitted in late December of 2013. It took the DNR less than a month to review, approve and issue his permit application and forward it to the Corps of Engineers for their consideration.

More than a year and a half later the Corps closed out Mr. Bragger's application without a determination or notification to Mr. Bragger. It wasn't until Mr. Bragger requested the assistance of a Farm Bureau employee that it came to light that the Corps had erroneously closed his application file and failed to notify Mr. Bragger of anything.

The system is not working as it should. If the Corps cannot sort out what to do with an application for permit for one temporary bridge over a small creek in Buffalo County, Wisconsin, how on Earth do the authors of this rule expect the Corps to handle the tens of thousands of additional permits that this rule will trigger?

Farmers cannot wait two years to till their fields, or apply fertilizers and pest management products. Under the new definition of 'waters of the United States', it is anticipated that farmers will have to submit countless permits for numerous fields that now fall within the 'waters of the United States' definition and are not exempt from the farming activities classified as 'normal'. (Please reference the following attachment for analysis of 'Waters of the U.S.' in Wisconsin Farmland: *Wisconsin WOTUS Maps*)

The Wisconsin DNR is staffed with local employees who understand the Wisconsin agricultural climate, topography and landscape. The DNR balances water quality management with reasonable farming practices and the Wisconsin Farm Bureau Federation prefers to maintain this state model instead of a federal permit model.

The overbroad and vague rule that the EPA promulgated to define 'waters of the United States' has illustrated another serious problem with agency rulemaking. The federal courts' approach to determining whether a rule is lawful involves deferring to the agency's interpretation of a statute and deferring again to the agency's interpretation of its own rules. As scholars and some of the Justices of the U.S. Supreme Court have pointed out, this two-stage system of deference actually encourages agencies to promulgate broad and vague rules. The agencies then expand their power by interpreting those rules broadly during the course of implementation and enforcement.

With the 'waters of the United States' rule, the EPA has repeatedly and emphatically assured farmers and the public (in speeches and blogs) that the new rule will not increase permitting obligations for farmers or 'get in the way' of farming; However, courts are not likely to give much consideration to speeches and blogs.

Months and years from now, with an ambiguous regulation before a judge, the agency's interpretation will be unassailable. The end result is that the regulated community is ambushed; the rules allow for a wide range of interpretations, the agency's informal campaign during rulemaking provides a narrow and comforting interpretation, and the regulated first learn their actual obligations and liabilities when the enforcement actions begin. This is not how it was meant to be. Furthermore, requests by the agencies for clarification and explanation of the rules implications on farmers and landowners have not been addressed. Vague references to farming exemptions show the lack of substantial engagement and have left much to be desired by the farmers who will ultimately pay the price for enforcement.

During the past year, EPA and the Corps have repeatedly said that farmers have nothing to fear from the proposed rule because those traditional agricultural exemptions remain intact. These statements are misleading. The existing agricultural exemptions,

as interpreted by the EPA and Corps, will not protect farmers from burdensome federal permit requirements and potentially devastating liability under this proposed rule.

Agricultural exemptions have been significantly limited during the past several decades by agency and judicial interpretations. Traditionally, these exemptions protected farming from Clean Water Act permit requirements. Much of the remaining benefit of those exemptions would be eliminated by an expansive interpretation of 'waters of the United States' to include ditches and drainage paths that run across and nearby farmland. The result would be wide-scale litigation risk and potential Clean Water Act liability for many routine farming and ranching activities that occur without the need for cumbersome and costly Clean Water Act permits.

The most important exemption for Wisconsin farmers excludes 'normal' farming, ranching and forestry activities from section 404 'dredge and fill' permit requirements. This exemption specifically applies to discharges of 'dredge and fill' material, which includes moving dirt (plowing, grading and digging) in wetlands that are deemed to be 'waters of the United States.' Congress enacted the exemption in 1977, in response to Corps regulations defining 'waters of the United States' to include certain wetlands. Under the exemption, "normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber and forest products, or upland soil and water conservation practices" are generally exempt from section 404 permitting requirements.

While Congress's words might seem to broadly insulate all "normal" farming, ranching and forestry from section 404 permit requirements, EPA and the Corps quickly narrowed the exemption and have continued to narrow it. For example, the agencies immediately promulgated regulations interpreting the exemption to apply only to "established" i.e. ongoing operations. Because the exemption was enacted in 1977, this has been construed to mean that only farming ongoing at the same location since 1977 was exempted from permit requirements.

Newer (post-1977) operations that involve farming or ranching in jurisdictional wetlands would, according to the agencies, require a section 404 permit until the operation has become 'established.' Even where farming or ranching has been temporarily stopped, and then recommenced, the agencies have found the operation ceased to be 'ongoing,' and the exemption no longer applies.

These interpretations and clarification have left farmers with a sense of uncertainty for farming exemptions in the future and a mistrust of agency intentions. Farmers need regulatory certainty when operating their farming businesses and the history of interpretations by the agencies for 'normal' farming exemptions leaves doubt that anything is permanently exempt.

Many farms and ranches cannot qualify for the 'normal' exemption, as interpreted by the agencies, because they have not been continuously conducted at the same location since 1977. Under the proposed rule, these operations will be subject to section 404

permit requirements (and potential Clean Water Act enforcement and penalties) for moving dirt (plowing, planting, building fences, etc.) where those activities occur in low spots and drainage paths deemed to be waters of the U.S. under the proposed rule.

Another limitation on the scope of the ‘normal’ farming exemption is the so-called ‘recapture’ provision. Under this provision, the normal farming exemption does not apply to any activity “having as its purpose bringing an area of navigable water into a use to which it was not previously subject, where the reach of navigable waters may be impaired or the reach of such waters be reduced,” i.e., converting wetland to non-wetland so as to make it amenable to crop production. Put differently, where discharges of dredged or fill material are used to bring land into a *new use*, i.e. making wetlands amenable to farming and *impair the reach or reduce the scope of jurisdictional waters*, those discharges are not exempt.

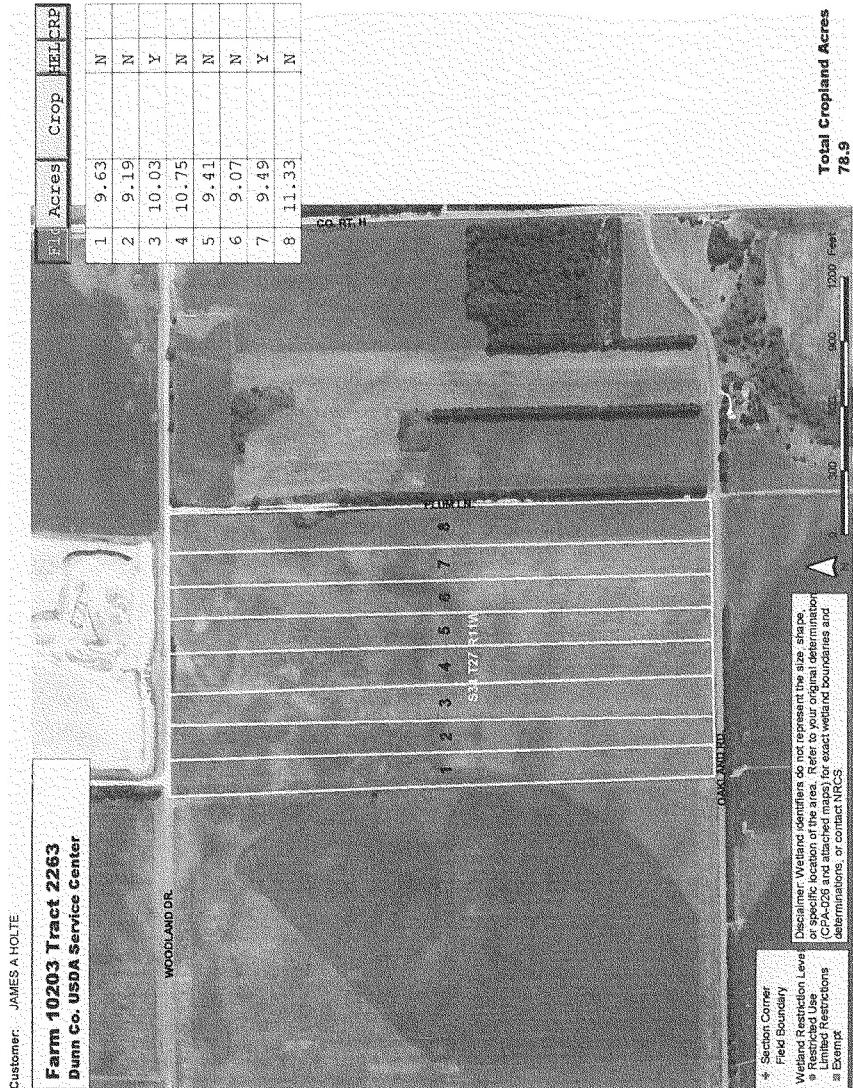
The agencies have broadly interpreted the ‘recapture’ provision to apply even when the ‘new use’ is simply a change from one crop to another crop; however, the greatest expansion yet would result from the published rule.

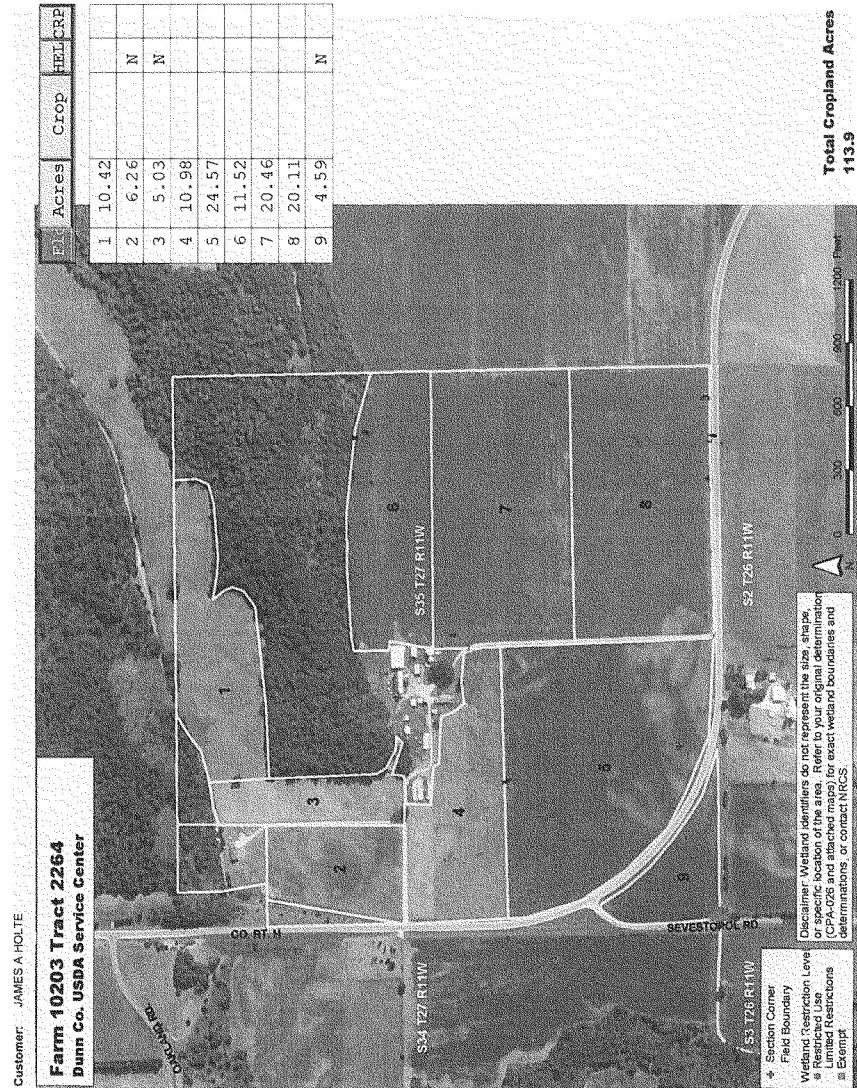
If ‘waters of the United States’ include land features as subtle as an ephemeral drainage path running across a farm field, or small, isolated wetlands in a field, then even ordinary plowing could easily ‘impair’ the reach or ‘reduce’ the scope of those purported ‘waters.’

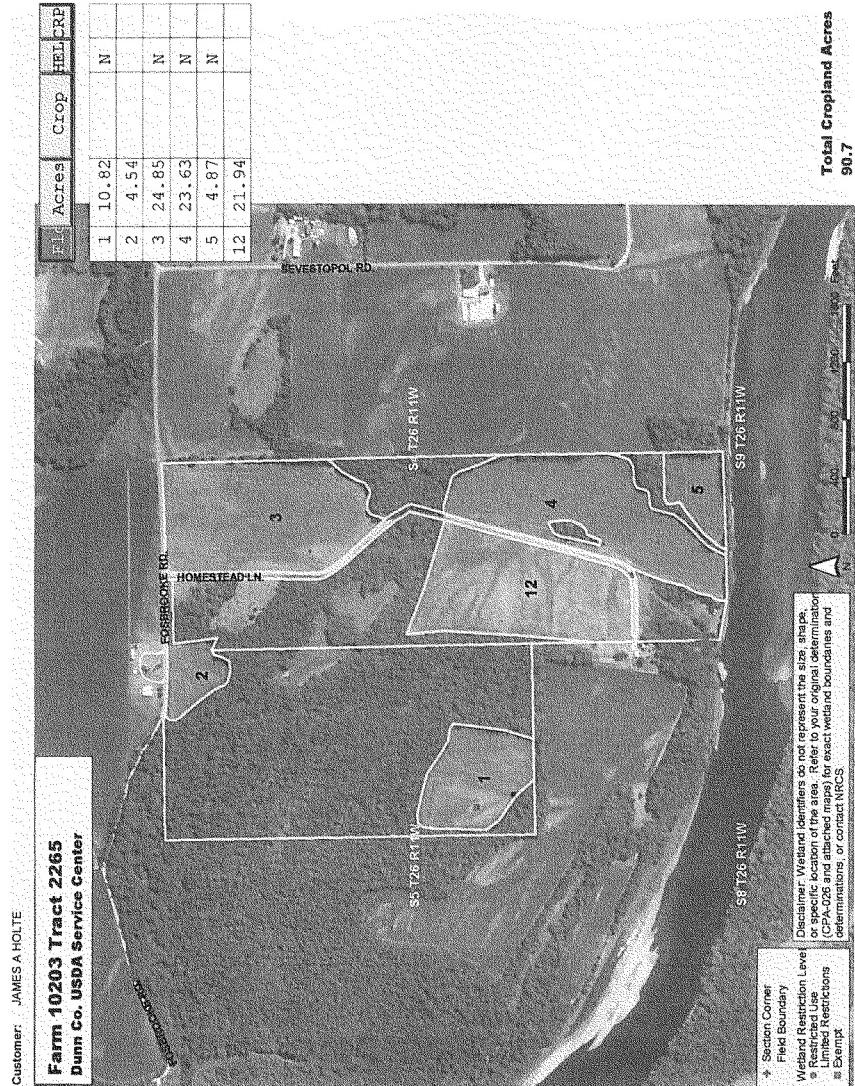
In the proposed rule’s preamble the agencies admit that if farming has eliminated a bed and bank where one previously existed (such as eliminating a subtle channel by smoothing the gradient of a farm field by cultivation) the agencies would view that as ‘converting’ jurisdictional waters into non-jurisdictional waters. Any such action, including ordinary plowing, would violate the Clean Water Act in the agencies’ view.

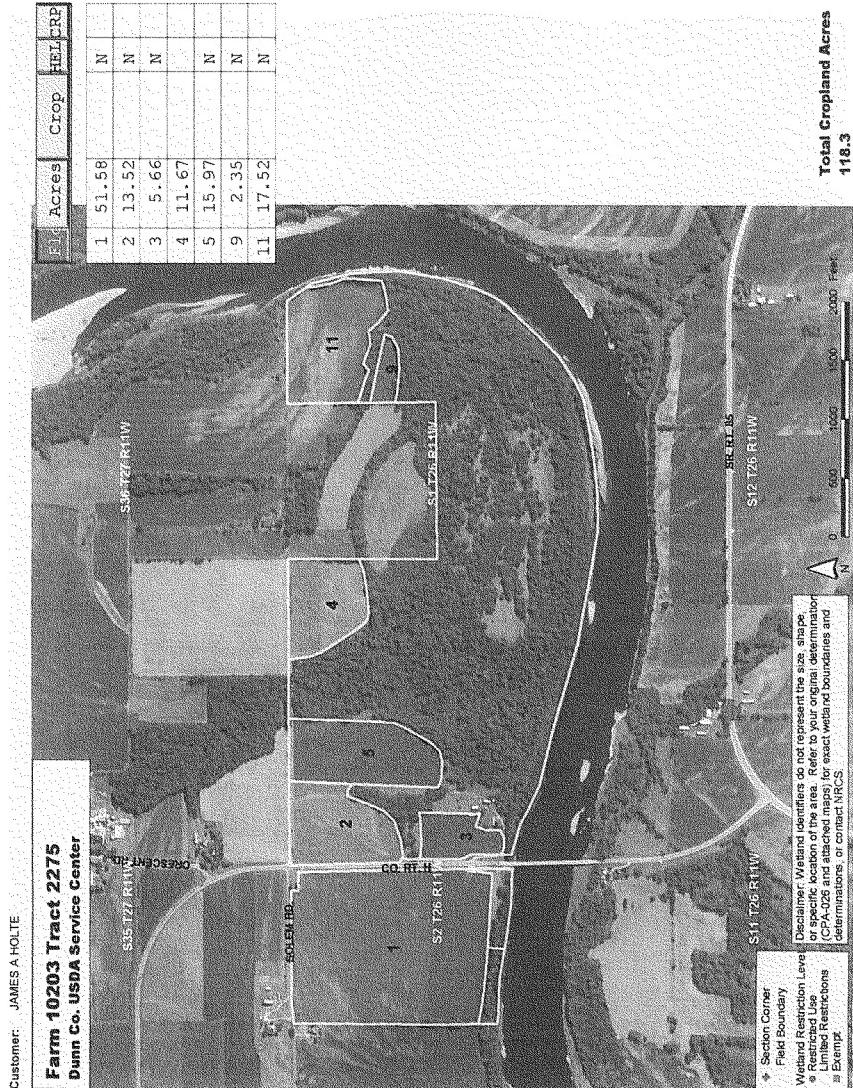
Unless this rule is drastically altered, it will result in potential Clean Water Act liability and federal permit requirements for a vast number of commonplace and essential farming and forestry practices.

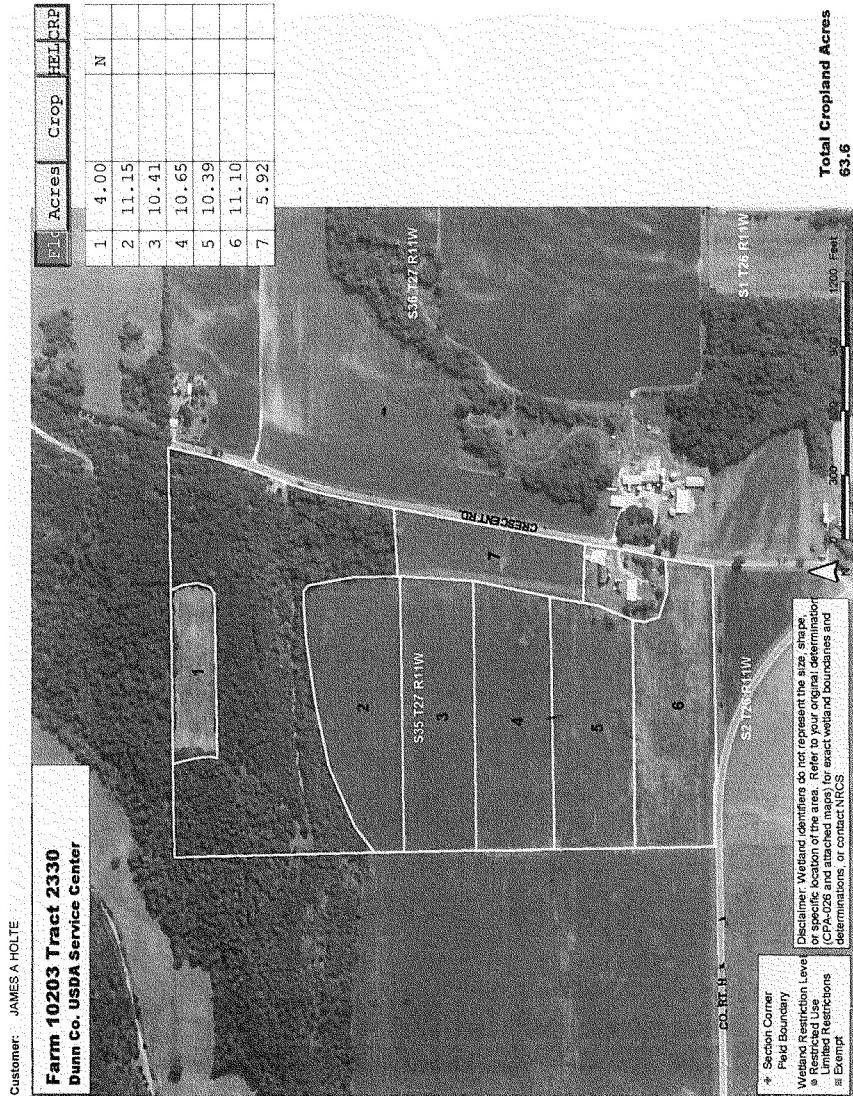
It’s impossible to know just how many farmers and landowners will be subject to agency enforcement and private citizen lawsuits. What is certain is that a vast number of common, responsible farming and forestry practices that occur today without the need for a federal permit would be highly vulnerable to Clean Water Act enforcement under the ‘waters of the United States’ rule.











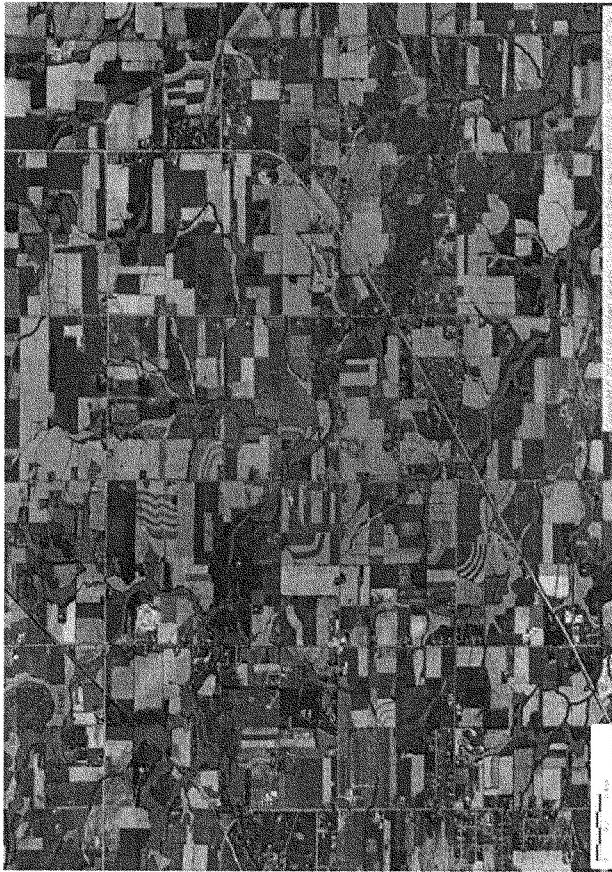
“Waters of the U.S.” in Wisconsin Farmland

59

Maps by Geosyntec
Analysis by American Farm Bureau Federation



Area of focus is near Marshfield, Wisconsin in Wood County.



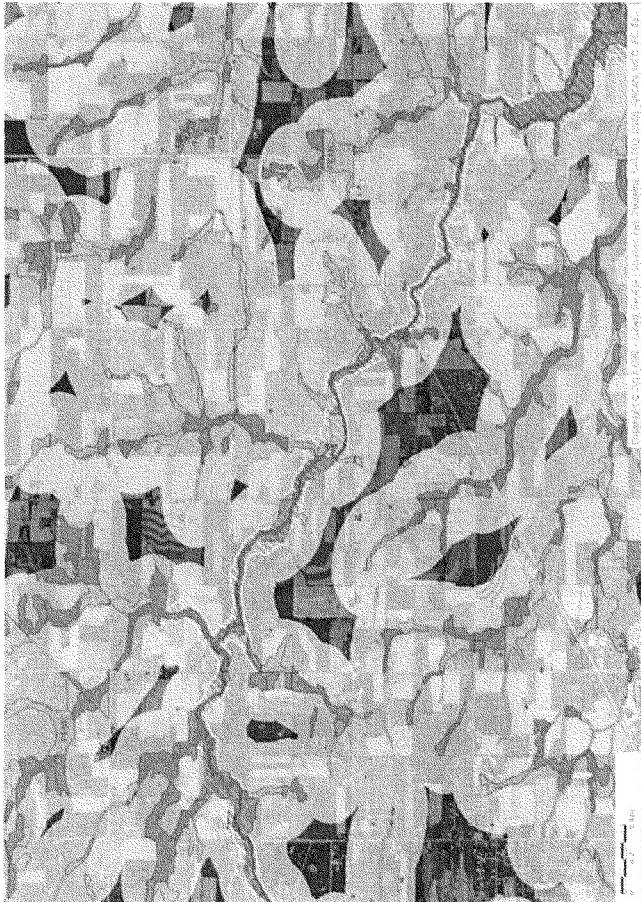
Automatically Regulated "Tributaries"

Perennial, intermittent and ephemeral tributaries and adjacent wetlands all deemed jurisdictional without further analysis. (Under prior rules, only perennial and intermittent tributaries were jurisdictional without case-by-case analysis.) Ditches also regulated if “excavated in” or “relocated” a tributary. This map does not show smaller ditches that may be jurisdictional and may not include all ephemeral streams. (Note: light blue shapes designate freshwater ponds, green shapes designate wetlands.)



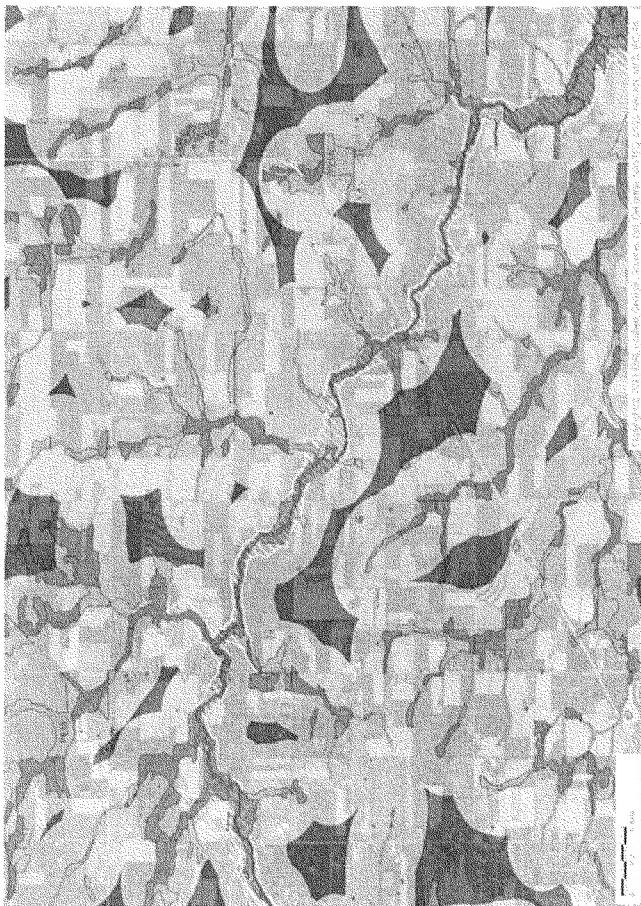
Automatically Regulated Adjacent Waters

Includes all “waters”—including wetlands—that lie even partially within a 100-foot buffer (pink shading) around all perennial, intermittent and ephemeral streams.



Automatically Regulated Adjacent Waters

Includes all “waters”—including wetlands—where any part is within the 100-year floodplain and not more than 1,500 feet from a tributary. Light green shading shows the 1,500-feet zone and hash marks show the known FEMA 100-year flood zone (which may be out-of-date or may not be relied upon by the Corps). **Absent definitive flood zone information from the Corps, any water partially within the light green shading is a possible “adjacent water.”**



Maybe Regulated “Significant Nexus” Waters

Water/wetlands even partially within 4,000 feet (about $\frac{3}{4}$ mile) of a tributary can be regulated on a “significant nexus” finding. Orange shading shows land outside the possible adjacency zone but within the 4,000 foot zone.

Even without mapping around all jurisdictional ditches, the area of possible regulation covers the entire map.



Area of focus is near Arlington, Wisconsin in Columbia County.



Automatically Regulated "Tributaries"

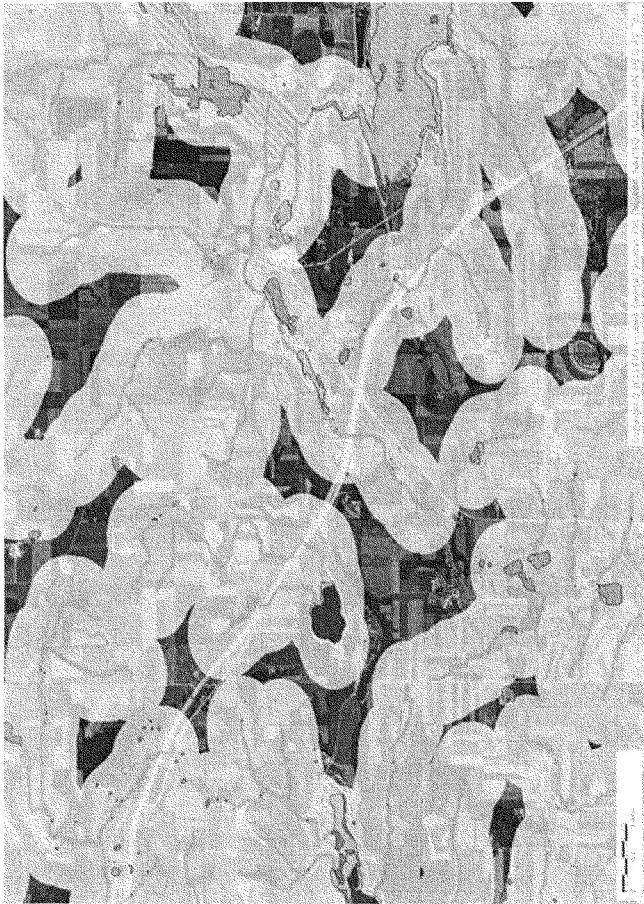
Perennial, intermittent and ephemeral tributaries and adjacent wetlands all deemed jurisdictional without further analysis. (Under prior rules, only perennial and intermittent tributaries were jurisdictional without case-by-case analysis.) Ditches also regulated if "excavated in" or "relocated" a tributary. This map does not show smaller ditches that may be jurisdictional and may not include all ephemeral streams.

(Note: light blue shapes designate freshwater ponds, dark blue shapes designate lakes, brown and green shapes designate wetlands.)



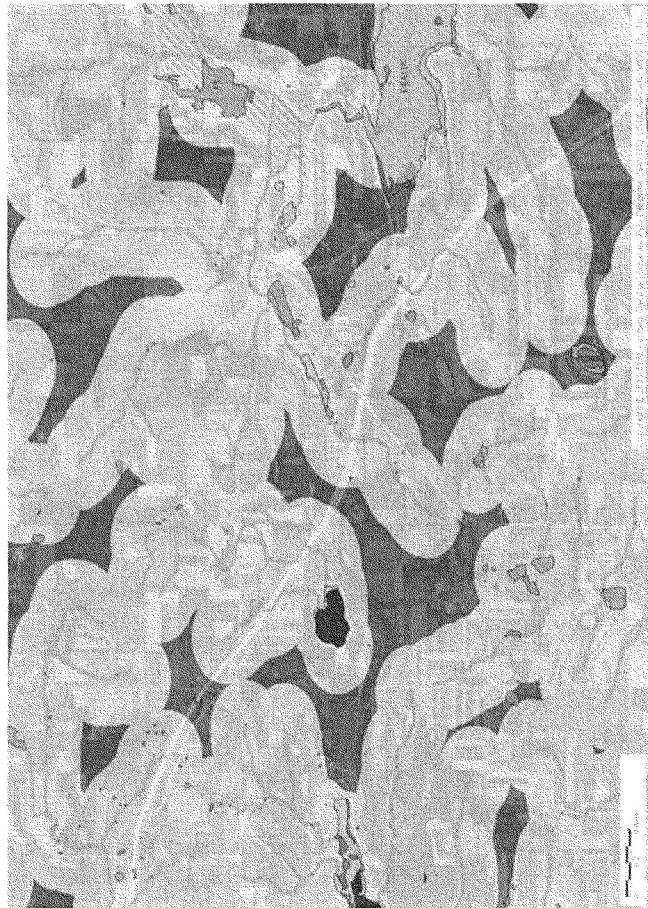
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Automatically Regulated Adjacent Waters

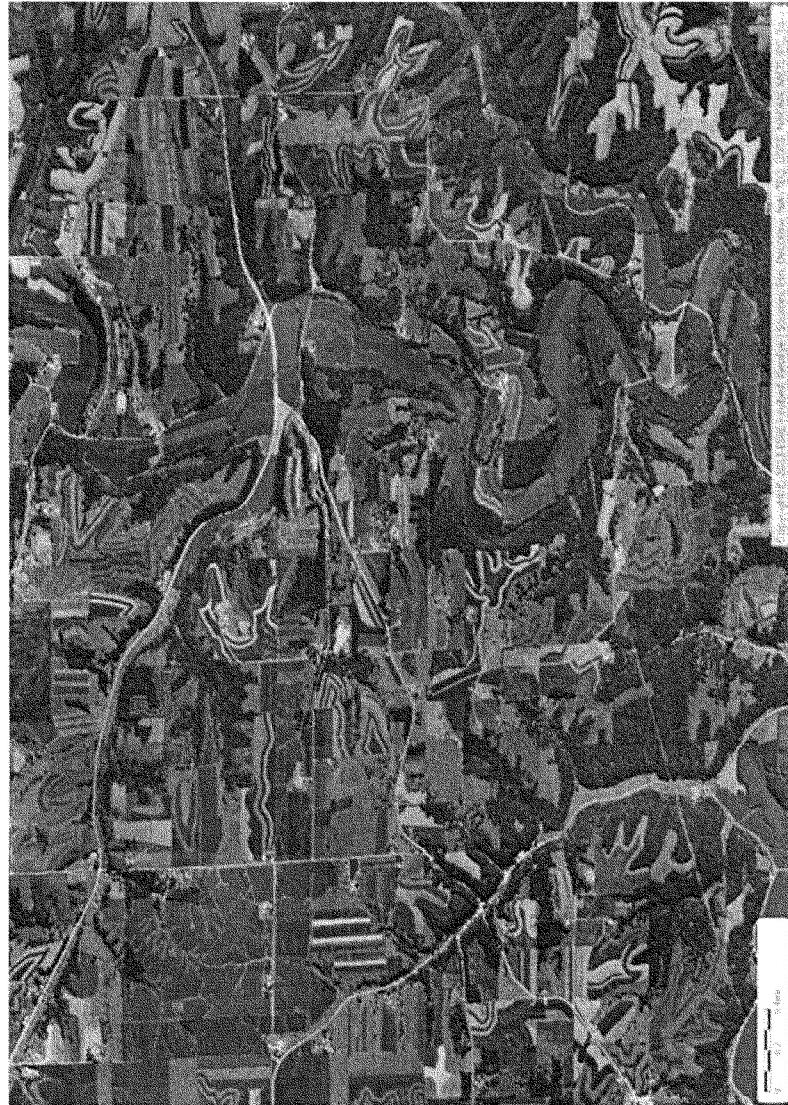
Includes all "waters"—including wetlands—where any part is within the 100-year floodplain and not more than 1,500 feet from a tributary. Light green shading shows the 1,500-feet zone and hash marks show the known FEMA 100-year flood zone (which may be out-of-date or may not be relied upon by the Corps). **Absent definitive flood zone information from the Corps, any water partially within the light green shading is a possible "adjacent water."**



Maybe Regulated "Significant Nexus" Waters

Water/wetlands even partially within 4,000 feet (about $\frac{3}{4}$ mile) of a tributary can be regulated on a "significant nexus" finding. Orange shading shows land outside the possible adjacency zone but within the 4,000 foot zone.

Even without mapping around all jurisdictional ditches, the area of possible regulation covers the entire map.



Area of focus is near Lancaster, Wisconsin in Grant County.



Automatically Regulated "Tributaries"

Perennial, intermittent and ephemeral tributaries and adjacent wetlands all deemed jurisdictional without further analysis. (Under prior rules, only perennial and intermittent tributaries were jurisdictional without case-by-case analysis.) Ditches also regulated if "excavated in" or "relocated" a tributary. This map does not show smaller ditches that may be jurisdictional and may not include all ephemeral streams. (Note: light blue shapes designate freshwater ponds, aqua blue shapes designate riverine.)



Automatically Regulated Adjacent Waters

Includes all “waters”—including wetlands—that lie even partially within a 100-foot buffer (pink shading) around all perennial, intermittent and ephemeral streams.



Automatically Regulated Adjacent Waters

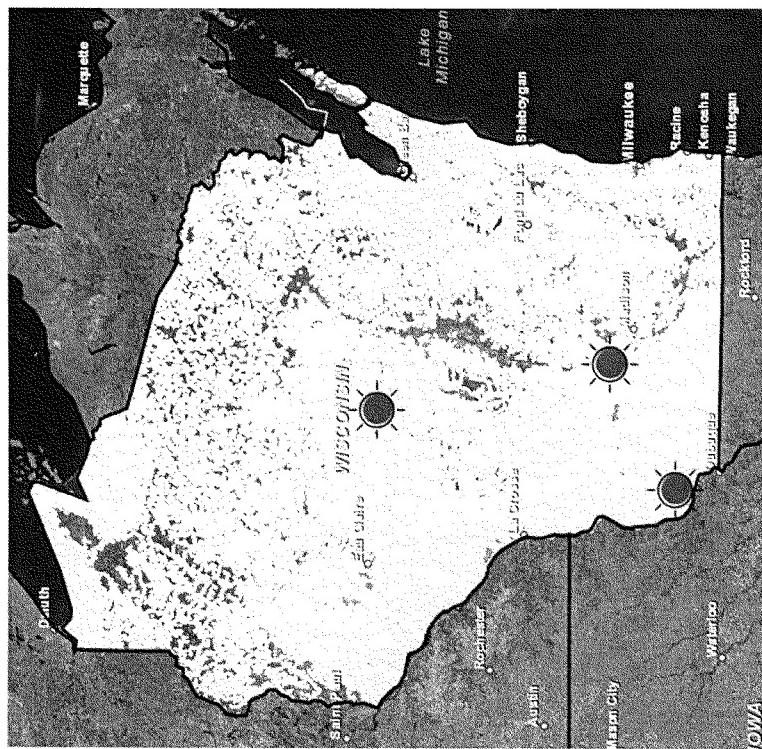
Includes all “waters”—including wetlands—where any part is within the 100-year floodplain and not more than 1,500 feet from a tributary. Light green shading shows the 1,500-feet zone and hash marks show the known FEMA 100-year flood zone (which may be out-of-date or may not be relied upon by the Corps). **Absent definitive flood zone information from the Corps, any water partially within the light green shading is a possible “adjacent water.”**



Maybe Regulated "Significant Nexus" Waters

Water/wetlands even partially within 4,000 feet (about $\frac{3}{4}$ mile) of a tributary can be regulated on a 'significant nexus' finding. Orange shading shows land outside the possible adjacency zone but within the 4,000 foot zone.

Even without mapping around all jurisdictional ditches, the area of possible regulation covers the entire map.



The scope of the final rule's impact in the focus area is similar to the rest of the state

Why Should I Try to Identify WOTUS on the Land I Farm?

- Unpermitted discharges of “pollutants” into WOTUS are unlawful—and carry large potential penalties—even if the farmer or rancher has no knowledge that a feature is WOTUS. If a feature is later determined to be WOTUS, government or citizen enforcers could “reach back” and impose penalties for any discharge that occurred over the past five years.
- Because the WOTUS rule is so broad and complex, however, it will be almost impossible for farmers and ranchers to determine with confidence that any potential “water” feature is not WOTUS.
- Consultants may provide useful advice on identifying wetlands, measuring distances, locating available floodplain maps and searching publicly available historical records. But the only way to be confident that any water feature is not WOTUS is to request a jurisdictional determination or “JD” from the Corps of Engineers.

What Activities May Trigger CWA Liability and Permit Requirements?

- The application from a mechanical applicator (sprayer/spreader/nozzle) of any “pollutant” *in any amount* into a WOTUS requires a section 402 NPDES permit issued by state regulatory agencies or directly from EPA. A permit is required even if the WOTUS is dry at the time of application. Pollutants include, among other things:
 - chemical or biological pesticides (herbicides, insecticides, fungicides and coated seeds)
 - fertilizers (nitrogen, phosphorus, potassium and micro nutrient)
 - manure and manure products (including compost)
 - A discharge of “dredged or fill material” can occur as a result of farming or ranching activities that involve moving dirt in a WOTUS. These discharges require a section 404 “dredge and fill” permit issued by the Corps of Engineers (again, even if the feature is dry at the time)—unless the activity qualifies for an exemption explained below. Possibly regulated activities include:
 - manipulating the soil on a field, such as grading, laser leveling, terracing, plowing, deep ripping, etc.,
 - construction and maintenance of roads, fences, ditches, ponds and culverts.
 - Congress established several exemptions from the section 404 “dredge and fill” permit requirement. Under these exemptions, farmers and ranchers may not need a permit for plowing, seeding, cultivating, and harvesting (defined as “normal” farming practices), or for certain other activities like minor drainage, upland soil and water conservation practices, drainage ditch maintenance, construction and maintenance of irrigation ditches, farm/stock ponds, farm/forest roads and maintenance of levees/dams.
- It is very important to understand that the Corps of Engineers has interpreted these exemptions *very narrowly* and its interpretations will generally be controlling in any enforcement action. As a result, many common farming practices that involve moving dirt in a WOTUS will NOT qualify for an exemption and will trigger a need for a 404 permit.

“Waters of the U.S.” Zones in Wisconsin

78

Wisconsin	Acres	Share of Total Acres
Total Acres in State	35,895,842	
Total Acres w/i 4,000-foot buffer	32,914,893	92%
Total Acres w/i 1,500-foot buffer	23,061,190	64%
Total Acres w/i 100-foot buffer	2,076,150	6%



REPLY TO
ATTENTION OF
Operations
Regulatory (MVP-2011-00633-BCN)

DEPARTMENT OF THE ARMY
ST. PAUL DISTRICT, CORPS OF ENGINEERS
180 FIFTH STREET EAST, SUITE 700
ST. PAUL MINNESOTA 55101-1678

01/13/2014

THIS IS NOT A PERMIT

Joe Bragger
Hildegard Bragger Trust,
W115 County Road X
Independence, Wisconsin 54747

Dear Mr. Bragger:

We have received your submittal described below. You may contact the Project Manager with questions regarding the evaluation process. The Project Manager may request additional information necessary to evaluate your submittal.

File Number: MVP-2011-00633-BCN

Applicant: Joe Bragger

Project Name: Clear Span Bridge

Received Date: 01/13/2014

Project Manager: David Studenski
U.S. Army Corps of Engineers
La Crescent Field Office
1114 South Oak Street
La Crescent, Minnesota 55947-1338
651-290-5902

Additional information about the St. Paul District Regulatory Program can be found on our web site at <http://www.mvp.usace.army.mil/missions/regulatory>.

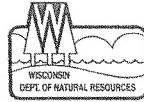
Please note that initiating work in waters of the United States prior to receiving Department of the Army authorization could constitute a violation of Federal law. If you have any questions, please contact the Project Manager.

Thank you.

U.S. Army Corps of Engineers
St. Paul District
Regulatory Branch

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
 Superior Service Center
 1701 N 4th Street
 Superior, WI 54880

Scott Walker, Governor
 Cathy Stepp, Secretary
 Telephone 608-266-2621
 Toll Free 1-888-936-7463
 TTY Access via relay - 711



01/06/2014

GP-WC-2014-6-00049

Hildegard Bragger Trust
 Joe Bragger
 W115 County Rd X
 Independence, WI 54747

Dear Mr. Bragger:

This acknowledges receipt of the general permit fee and your application to construct a clear span bridge across Traverse Valley Creek, Town of Montana in Buffalo County. The site location is NE of the SE, Sec. 11, T22N, R10W.

Our field staff are currently evaluating your proposal. Depending on the amount of information you provided and the complexity of your project, you may be asked to provide additional information so that a complete evaluation can be made. We will notify you of the final disposition of your application as soon as we complete our review.

If you have not already done so, please contact the Buffalo County zoning office to determine if a local permit is also required for your project. I have forwarded a copy of your application to the U.S. Army Corps of Engineers. They will advise you directly as to whether their regulations apply to your project.

If you have any questions, please contact your local Water Management Specialist, Stacey Carlson at (715) 284-1424 or email Stacey.Carlson@wisconsin.gov.

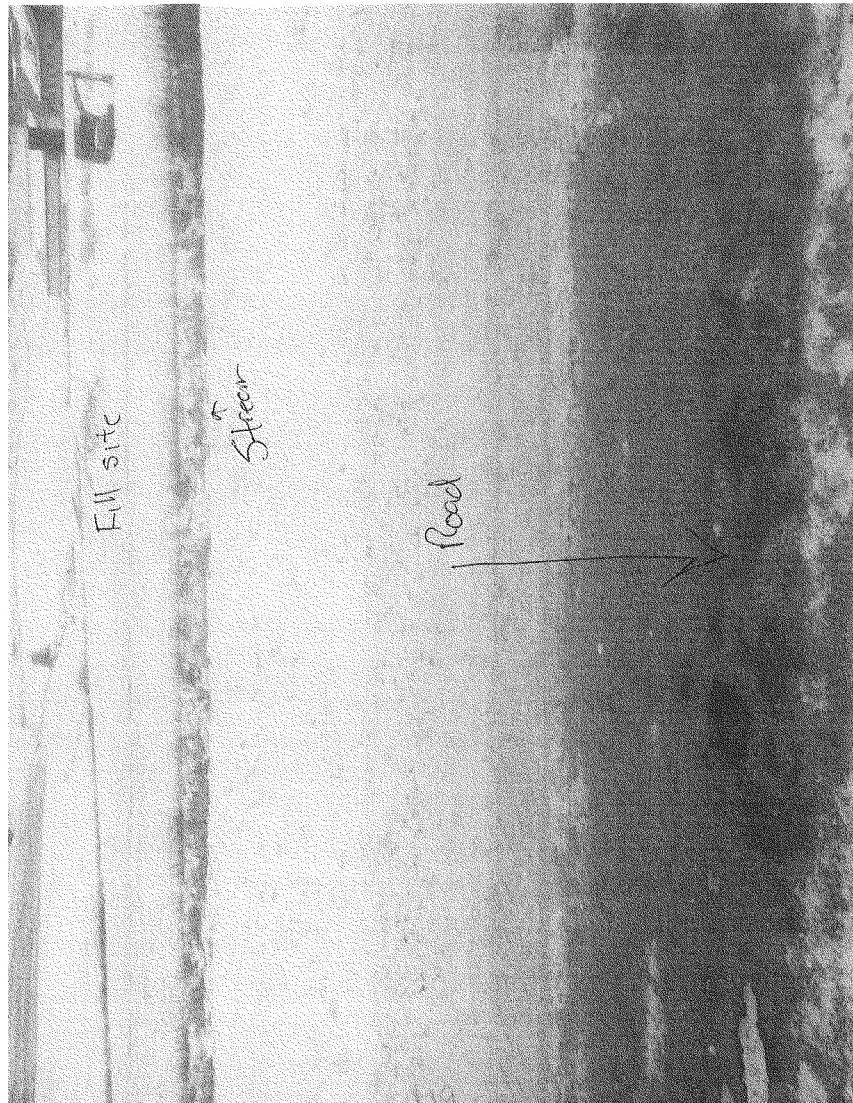
Sincerely,

Lynn Hudacek

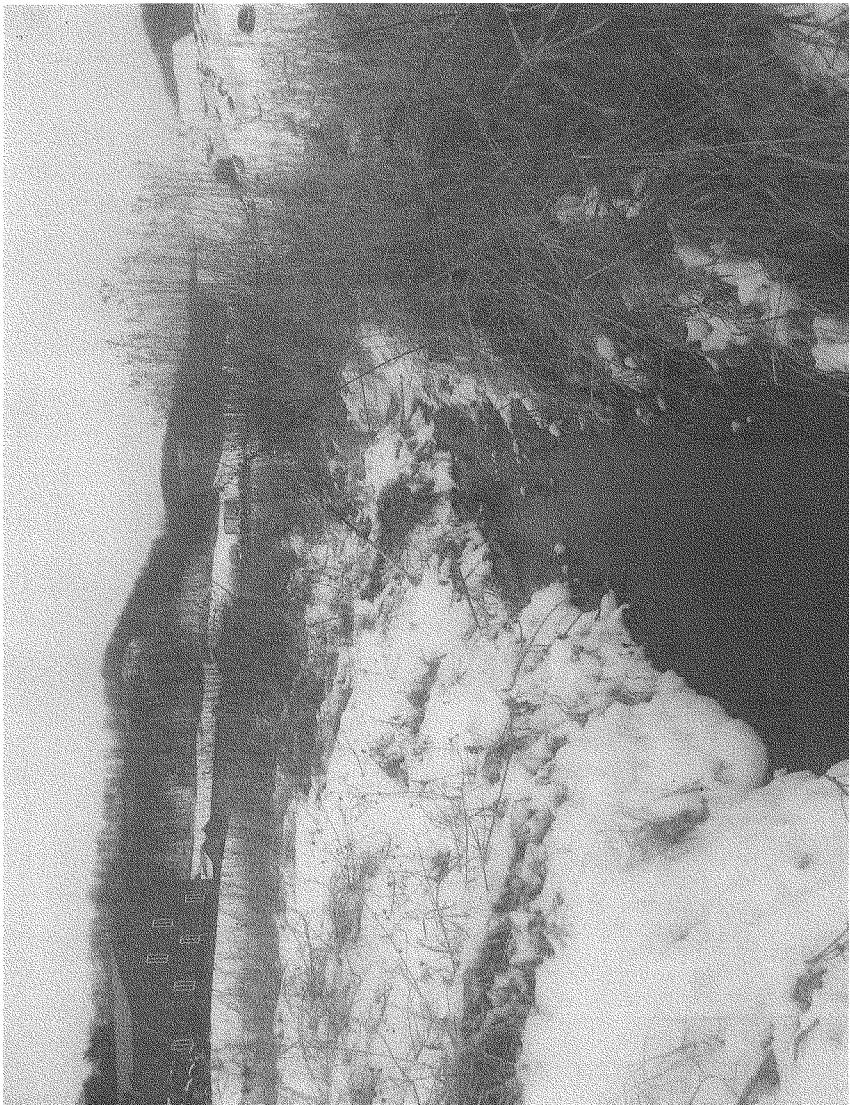
Lynn Hudacek
 Waterway and Wetland Permit Intake Specialist

cc: Stacey Carlson, Water Management Specialist
 David Studenski, Project Manager, (651) 290-5902, Attn: OP-R, 1114 South Oak Street, La Crescent, MN 55947-1338, U.S. Army Corps of Engineers
 Buffalo County Zoning

Quality Customer Service is Important to Us. Tell Us How We Are Doing.
Water Division Customer Service Survey
<https://www.surveymonkey.com/s/WDNRWater>

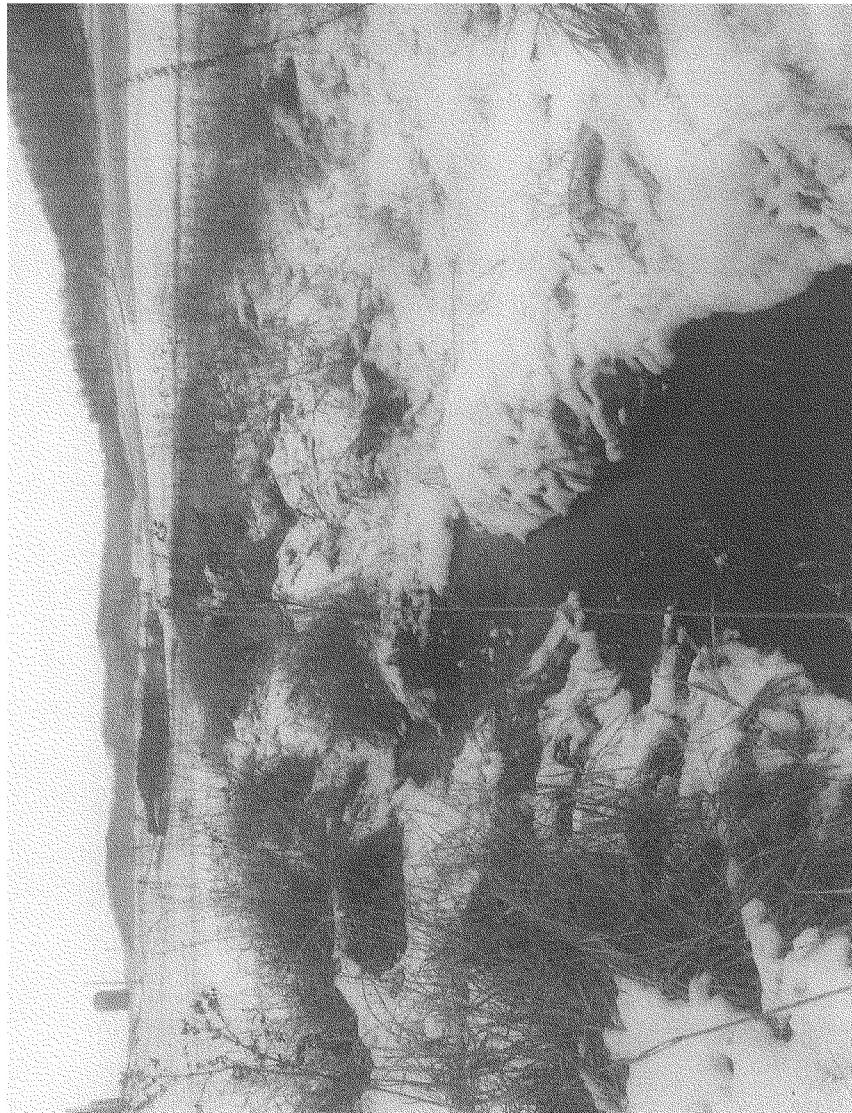












State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
Black River Falls Service Center
910 Hwy 54 E
Black River Falls, WI 54615

Scott Walker, Governor
Cathy Stepp, Secretary
Telephone 608-266-2621
Toll Free 1-888-936-7463



January 22, 2014

GP-WC-2014-6-00049

Hildegard Bragger Trust
Joe Bragger
W115 County Rd X
Independence, WI 54747

Dear Mr. Bragger:

The Department of Natural Resources has completed its review of your application for a permit to construct a temporary clear span bridge across Traverse Valley Creek, in the Town of Montana, Buffalo County. You will be pleased to know your application is approved with a few limitations.

Please take this time to re-read the permit eligibility standards and conditions. The eligibility standards can be found on your application checklist (found at <http://dnr.wi.gov/topic/waterways/> - keyword: general permits). The permit conditions are attached to this letter which lists the conditions which must be followed.

A copy of the permit must be posted for reference at the project site. Please read your permit conditions carefully so that you are fully aware of what is expected of you. You are responsible for meeting all general permit eligibility standards and permit conditions.

Please note you are required to submit photographs of the completed project within 7 days after you've finished construction. This helps both of us to document the completion of the project and compliance with the permit conditions.

Be sure to contact your local zoning office and U.S. Army Corps of Engineers for any local or federal permits that may be required for your project.

Your next step will be to notify me of the date on which you plan to start construction and again after your project is complete.

If you have any questions about your permit, please call me at (715) 284-1424 or email
Stacey.Carlson@wisconsin.gov.

Sincerely,



Stacey Carlson

Water Management Specialist

cc: David Studenski, U.S. Army Corps of Engineers
Buffalo County Zoning Administrator
Bob Jumbeck, Conservation Warden

Quality Customer Service is Important to Us. Tell Us How We Are Doing.

Water Division Customer Service Survey

<https://www.surveymonkey.com/s/WDNRWater>

**STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES****GENERAL PERMIT - Bridge-clear span
GP-WC-2014-6-00049**

Joe Bragger is hereby granted under Section 30.123(7), Wisconsin Statutes, a permit to construct a clear span bridge across Traverse Valley Creek, in the Town of Montana, Buffalo County, also described as in the NE1/4 of the SE1/4 of Section 11, Township 22 North, Range 10 West, subject to the following conditions:

PERMIT

1. You must notify Stacey Carlson at phone (715) 284-1424 or email Stacey.Carlson@wisconsin.gov before starting construction and again not more than 5 days after the project is complete.
2. You must complete the project as described on or before 01/22/2017. If you will not complete the project by this date, there is no opportunity for an extension and you must apply for a new permit.
3. This permit does not authorize any work other than what you specifically describe in your application and plans, and as modified by the conditions of this permit. If you wish to alter the project or permit conditions, you must first obtain written approval of the Department.
4. Before you start your project, you must first obtain any permit or approval that may be required for your project by local zoning ordinances and by the U.S. Army Corps of Engineers. You are responsible for contacting these local and federal authorities to determine if they require permits or approvals for your project. These local and federal authorities are responsible for determining if your project complies with their requirements.
5. Upon reasonable notice, you shall allow access to your project site during reasonable hours to any Department employee who is investigating the project's construction, operation, maintenance or permit compliance.
6. The Department may modify or revoke this permit for good cause, including if the project is not completed according to the terms of the permit or if the Department determines the activity is detrimental to the public interest.
7. You must post a copy of this permit at a conspicuous location on the project site, visible from the waterway, for at least five days prior to construction, and remaining at least five days after construction. You must also have a copy of the permit and approved plan available at the project site at all times until the project is complete.
8. Your acceptance of this permit and efforts to begin work on this project signify that you have read, understood and agreed to follow all conditions of this permit.

9. The permittee shall maintain the project in good condition and in compliance with the terms and conditions of the permit, NR 320, Wis. Admin. Code and s. 30.206, Stats.
10. This project shall comply with all conditions identified in Wisconsin Administrative Code NR 320, and identified in the Instructions for the General Permit application.
11. You must submit a series of photographs to the Department, within one week of completing work on the site. The photographs must be taken from different vantage points and depict all work authorized by this permit.
12. You, your agent, and any involved contractors or consultants may be considered a party to the violation pursuant to Section 30.292, Wis. Stats., for any violations of Chapter 30, Wisconsin Statutes, or this permit.
13. Construction shall be accomplished in such a manner as to minimize erosion and siltation into surface waters. Erosion control measures (such as silt fence and straw bales) must meet or exceed the technical standards of ch. NR 151, Wis. Admin. Code. The technical standards are found at:
http://dnr.wi.gov/topic/stormwater/standards/const_standards.html.
14. All equipment used for the project, including but not limited to tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile, and pumps shall be de-contaminated for invasive and exotic viruses and species prior to use and after use.

The following steps must be taken *every time* you move your equipment to avoid transporting invasive and exotic viruses and species. To the extent practicable, equipment and gear used on infested waters shall not be used on other non-infested waters.

1. **Inspect and remove** aquatic plants, animals, and mud from your equipment.
2. **Drain all water** from your equipment that comes in contact with infested waters, including but not limited to tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps.
3. **Dispose** of aquatic plants, animals in the trash. Never release or transfer aquatic plants, animals or water from one waterbody to another.
4. **Wash your equipment** with hot (>104° F) and/or high pressure water,
- OR -
Allow your equipment to **dry thoroughly for 5 days**.

FINDINGS OF FACT

1. Joe Bragger has filed an application for a permit to construct a temporary clear span bridge across Traverse Valley Creek, in the Town of Montana, Buffalo County, also described as NE1/4-SE1/4 Section 11, T22N, R10W.
2. The project will consist of placing a 14 foot wide clear span bridge during frozen conditions. The temporary bridge is needed to haul fill material for manure storage. The bridge will be removed in the spring of 2014 with the approval of the fisheries biologist.
3. The Department has completed an investigation of the project site and has evaluated the project as described in the application and plans.
4. Traverse Valley Creek is a navigable water.
5. The proposed project, if constructed in accordance with this permit will not adversely affect water quality, will not increase water pollution in surface waters and will not cause environmental pollution as defined in s. 283.01(6m), Wis. Stats.
6. The proposed project, if constructed in accordance with this permit will not adversely affect wetlands.
7. The Department of Natural Resources and the applicant have completed all procedural requirements and the project as permitted will comply with all applicable requirements of Sections 1.11, 30.123(7), Wisconsin Statutes and Chapters NR 102, 103, 150, 299, NR 320 of the Wisconsin Administrative Code.
8. The temporary clear span bridge will not materially obstruct navigation because there is no known navigation at this site and the public could portage around the bridge if needed.
9. The temporary clear span bridge will not be detrimental to the public interest because it is placed on a temporary basis and will not have any ground disturbance or fill.
10. The temporary clear span bridge will not materially reduce the flood flow capacity of a stream because no supports or fill will be placed in the stream. The bridge will be placed on a temporary basis and also cabled to a post to prevent it being washed downstream.

CONCLUSIONS OF LAW

1. The Department has authority under ch. 30, Wis. Stats., and ch. NR 320, Wis. Adm. Code, to issue a permit for the construction and maintenance of this project.
2. The Department has complied with s. 1.11, Wis. Stats.

NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that the Wisconsin statutes and administrative rules establish time periods within which requests to review Department decisions shall be filed. For judicial review of a decision pursuant to sections 227.52 and 227.53, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review shall name the Department of Natural Resources as the respondent.

Dated at Black River Falls Service Center, Wisconsin on 01/22/2014.

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES
For the Secretary

By



Stacey Carlson
Water Management Specialist

State of Wisconsin
Department of Natural Resources
dnr.wi.gov

CLEAR SPAN BRIDGE OVER STREAMS
 General Permit Application Checklist
 (06/2013)

Eligibility Criteria:	
Projects that do not meet all criteria are not eligible for this general permit. If your project does not qualify for this general permit, you may apply for an individual permit.	
The clear span bridge will not be located on a wild river designated under ch. NR 302, or where similar federal, state or local regulations prohibit the construction.	✓
The clear span bridge will span a bridge that is less than 35 feet wide, measured from ordinary high water mark to ordinary high water mark.	✓
At least one end of the bridge structure will be firmly anchored in a manner that will prevent the bridge from being transported downstream during flood conditions.	✓
The bridge will completely span the navigable stream from top of channel to top of channel with no support pilings in the stream.	✓
New bridges or replacements of existing bridges spanning navigable waterways shall maintain a clearance of not less than 5 feet.	
Note: The department may require clearance of more than 5 feet when it is likely the waterway will be navigated above its ordinary high water mark elevation or if it is used by watercraft or snowmobiles requiring greater clearance.	
Note: The department may allow less than 5 feet clearance when <u>all</u> the following apply: waterway is known to have little or no navigation or snowmobile use; the waterway is not anticipated to have navigational use by other than lightweight craft; the owner provides a portage over or around the bridge; the reduced clearance would not be detrimental to the public interest.	
Approach fill shall be a maximum of one foot deep at the bank and 0 feet at 15 feet landward of the bank. If depth of greater than one foot of approach is required or the approach must be located in a wetland, it shall be of an open ramp style that does not impede flow.	✓
Placement, repair and removal of the structure shall minimize the removal of trees, shrubs, and other shoreline vegetation above the ordinary high water mark.	
Note: Local zoning ordinances may place restrictions on activities located in mapped floodplains or in shoreland zones. The riparian is responsible for ensuring that their project is in compliance with any local zoning requirements.	
Accumulated brush, debris or other obstructions that are trapped in or underneath the structure will be regularly removed to prevent upstream flooding and to maintain structural integrity.	
Erosion control measures shall meet or exceed the technical standards for erosion control approved by the department under subch. V of ch. NR 151. Any area where topsoil is exposed during placement, repair or removal of a structure shall be immediately seeded and mulched to stabilize disturbed areas and prevent soils from being eroded and washed into the waterway. These standards can be found at: http://dnr.wi.gov/topic/stormwater/standards/ .	✓
The plans ensure that any area where topsoil is exposed during the placement, repair or removal of the structure will be immediately seeded and mulched to stabilize disturbed areas and prevent soils from being eroded and washed into the waterway.	✓
Unless part of a permanent storm water management system, all temporary erosion and sediment control practices will be removed upon final site stabilization. All areas disturbed during removal of temporary erosion and sediment control practices will be restored.	✓
All grading, excavation and land-disturbance activities in the plans and specs documents will be confined to the minimum area necessary for the placement, repair or removal of the structure and will not exceed 10,000 square feet.	✓
Note: If the project includes any grading, excavation or land-disturbance activity in excess of 10,000 square feet	

State of Wisconsin
Department of Natural Resources
dnr.wi.gov

CLEAR SPAN BRIDGE OVER STREAMS
 General Permit Application Checklist
 (06/2013)

you may also need to receive approval under a Grading General or Individual permit in addition to this permit.	
The project plans minimize adverse impacts on fish movement, fish spawning, egg incubation periods and high stream flows; the project may not occur during the following time periods: <ul style="list-style-type: none"> ✓ September 15 through May 15 for trout streams and navigable tributaries to trout streams. ✓ March 15 through May 15 for ALL waters located south of state highway 29. ✓ April 1 through June 1 for ALL waters located north of state highway 29. 	Will not affect Stream banks
Note: Per ch. NR 1.02(7), the department identifies and classifies trout streams to ensure adequate protection and proper management of this unique resource. To determine if a waterway is a trout stream, you may use the Designated Waters Theme on DNR's Surface Water Data Viewer: http://dnr.wi.gov/topic/surfacewater/swdv/	
Note: The applicant may request that these time period restrictions be waived by the department on a case-by-case basis, by submitting a written statement signed by the local department fisheries biologist, documenting consultation about the proposed dredging project, and that the local department fisheries biologist has determined that the requirements of this paragraph are not necessary to protect fish spawning for the proposed project.	
All equipment used for the project including but not limited to tracked vehicles, barges, boats, hoses, sheet pile and pumps shall be de-contaminated for invasive and exotic viruses and species prior to use and after use.	✓
The following steps must be taken every time you move your equipment to avoid transporting invasive and exotic viruses and species. To the extent practicable, equipment and gear used on infested waters shall not be used on other non-infested waters. <ul style="list-style-type: none"> • Inspect and remove aquatic plants, animals, and mud from your equipment. • Drain all water from your equipment that comes in contact with infested waters, including but not limited to tracked vehicles, barges, boats, hoses, sheet pile and pumps. • Dispose of aquatic plants, animals in the trash. Never release or transfer aquatic plants, animals or water from one waterbody to another. • Wash your equipment with hot (>104° F) or high pressure water, steam clean or allow your equipment to dry thoroughly for 5 days. 	✓
Follow the most recent department approved washing and disinfection protocols and department approved best management practices to avoid the spread of invasive species as outlined in NR 40, Wis. Adm. Code. These protocols and practices can be found on the Department website at http://dnr.wi.gov/topic/invasives/bmp.html Keyword: "equipment operator" and at http://dnr.wi.gov/topic/invasives/documents/EquipOper.pdf	✓
All equipment used for the project shall be designed and properly sized to minimize the amount of sediment that can escape into the water.	
Submit a series of photographs to the department within one week of placing the structure on this site and within one week of stabilizing disturbed areas on the site after removal of the structure. The photographs shall be taken from different vantage points and depict all work authorized by the permit.	

To Apply:

Once your application is complete, submit using the online system, or mail it to the permit intake address based on the county where your project is located. If you have questions or problems filling out or completing the application requirements, contact the Water Management Specialist for your county.

Permit intake addresses and Water Management Specialist contact information can both be found at the following web link: http://dnr.wi.gov/topic/Waterways/about_us/county_contacts.html

APPLICATION STATUS RECORD

<input type="checkbox"/> Date Received <u>1-6-14</u>	<input type="checkbox"/> Activity: <u>Clean Span Bridge -Temp (Culvert?)</u>
<input type="checkbox"/> Intake Specialist <u>Lynn H</u>	<input type="checkbox"/> Applicant: <u>Niedergard Bragger Trust</u>
<input type="checkbox"/> Enter in Data Base	<input type="checkbox"/> County: <u>Buffalo</u>
<input type="checkbox"/> Assign Number <u>CP-WC-2014-6-00049</u>	<input checked="" type="radio"/> T, C, or V of <u>Montana</u>
<input checked="" type="checkbox"/> Make File Folder	<input type="checkbox"/> QQ <u>NE</u> Q <u>SE</u> Sec <u>11</u> T <u>22</u> N R <u>10</u> E <u>W</u>
<input checked="" type="checkbox"/> Send Copy to ACOE	<input type="checkbox"/> Waterbody: <u>Travers Valley Creek</u>
<input checked="" type="checkbox"/> Process Application Fee <u>\$956</u> <u>\$303</u>	Missing Information:
<input type="checkbox"/> Fed or state funded	

NHI Checked Hits: YES / NO _____

Arch N Historical N

ASNR PRF PNW Trout Water Floodplain Mapped Wetlands Wetland Indicators
 Wild Rice Review Hits: YES / NO

Self-Certified: YES NO Complies with Conditions/Code for General Permit YES / NO

WATER MANAGEMENT SPECIALIST

Other Notes:

Other Notes: _____

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80' 3"

Journal of Clinical Anesthesia 2000; 12: 33-37
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Contact Applicant File Complete: _____ Contact Applicant File Incomplete: _____

Send Copy to Resource Managers:

- Endangered Resources Ecologist Date: _____
 - State Archaeologist Date: _____
 - Water Resources Specialist
 - Stormwater Program/Engineer
 - Fisheries Biologist
 - Wildlife Biologist
 - Dam Safety/Floodplain Engineer

Public Notice Required _____ Issued _____ Public Notice Received _____ Affadavits Received _____

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Ishpeming, MI

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Ojibwa, WI

John Zellar, Jr.
Germfask, MI

Mr. Henry Schienebeck
Executive Director
The Great Lakes Timber Professionals Association
3243 Golf Course Rd
Rhineland, WI 54501
(715) 282-5828

**Written Testimony before the U.S. Senate Committee on Homeland Security and Governmental Affairs for the field hearing on the Impact of Federal Regulations:
A Case Study of Recently Issued Rules**

Chairman Johnson, Ranking member Carper and members of the Committee, thank you for the invitation to testify at this hearing about the U.S. Environmental Protection Agency's (EPA) and the U.S. Army Corps of Engineers' (Corps) rule on "Definition of "Waters of the United States" Under the Clean Water Act" (WOTUS). We greatly appreciate this opportunity and the Committee's ongoing attention to this extremely important rule.

As the Executive Director of The Great Lakes Timber Professionals Association (GLTPA), I represent an association of over 1,000 members located primarily in Wisconsin and Michigan, who come from all aspects of the timber industry. Members include loggers, truckers, foresters, mills, landowners, conservationists, school districts and townships. GLTPA advocates for protecting a multiple-use forest for future generations. Members practice sustainable forestry, which includes best management practices for water quality.

GLTPA believes WOTUS is a far-reaching, unnecessary rule that provides no documented positive implication for water quality. However, because of its expanded territory it will undoubtedly add great expense to the cost of operation for farming and forestry.

It is hard to imagine a Wisconsin industry that is not impacted by surface water. The forest products industry is the second most financially significant industry in Wisconsin after agriculture. The industry creates almost 60,000 direct jobs and generates roughly \$23 billion of economic



activity annually. Northern Wisconsin's rural communities in particular are dependent on forestry for their social, economic, and ecological wellbeing. Due to the naturally wet landscape of Wisconsin, GLTPA is concerned that WOTUS could irreparably harm Wisconsin's economy.

Wisconsin already leads the way in water quality standards associated with forests. In 2013, the Wisconsin Department of Natural Resources conducted an audit of 75 state and county timber sales. Best management practices (BMPs) for water quality were correctly applied in 97% and 95% of the audited sites, respectively. In 2014, the monitoring team visited 58 federal and large landholder sites and found similar numbers for BMPs. As it stands, WOTUS seeks to improve water quality by greatly expanding EPA's already broad authority, thereby reducing local water regulation and control. How could taking control away from the people already doing such an exceptional job improve water quality?

EPA may question why GLTPA is concerned about this rule since silviculture currently has an exemption under WOTUS. At this time it is unclear whether EPA would seek to remove the silvicultural exemption. Frankly, we do not trust the existing exemption will remain for long. In 2014, the National Resource Defense Council filed a lawsuit seeking to remove the exemption, claiming forest roads cause sediment-laden runoff into WOTUS. Further, EPA itself stated in 2012 that it was looking at regulating forest road runoff. A silvicultural exemption without clear protection of forest roads would mean people could harvest timber, but have no way of removing it from the woods without the permission of the federal government. Since there is no evidence removing the exemption will improve water quality does it make sense to add cost and confusion to an already efficient and effective process?

Given the outstanding job the forest products industry has done in maintaining (and even improving) water quality, removing this exemption would serve no purpose other than to give the federal government expanded jurisdiction. This could cost the industry time and money without any additional benefit to the environment. Also, if WOTUS were to be implemented in place of the state BMP's currently used by forest managers, the vagueness of the rule would make it very difficult for anyone other than a federal or affiliated employee to make a determination as to what qualifies as wetland. Managers would fear being overruled and prosecuted for disturbance of a WOTUS. This would potentially increase cost if a land manager needs to interact with the Corp or the EPA on every decision.

For example, there are many old logging roads in the woods that new harvest operations could use with minimal improvement. Beavers will often build dams on these roads, which could create a wetland covered under WOTUS. So instead of using the existing logging road that could be improved without damaging water quality, the harvesting operators may have to build a complete new road. Rarely, if ever, could creating a new road cause fewer disturbances to the environment than using an



existing one. Additionally, this would create an unnecessary cost to the landowner, either in the form of time to get permission from the federal government or costs related to new road construction.

Building a road through a 40-acre wooded plot costs a minimum of \$1,200, not including finishes like gravel or culverts. Not only is there more disruption to the environment, everyone from the landowner to the logger is making less money because of a rule that provides no measurable benefit in water quality. Is that progress?

EPA has written that the rule does not “[p]rotect any types of waters that have not historically been covered by the Clean Water Act,” or, “[a]dd any new requirements for agriculture.” This is a very misleading statement. Perhaps the Clean Water Act has historically covered wetlands, but it has not covered every drop of water on every piece of land. Under the new WOTUS, every piece of property could be included in wetland regulation, completely stifling or destroying any economic value gained from those resources.

Perhaps the rule isn’t explicitly adding any new requirements for agriculture or silviculture, but how is expanding the regulated land base not requiring more time and money for compliance to expanded EPA and Corps authority? Even though an exemption exists, a farmer must now investigate every potential WOTUS on his property. Even then, because of the vagueness of the rule, he may face government prosecution for up to five years after unknowingly having discharged a regulated substance into a WOTUS.

Despite evidence that current state-level water BMPs are working very well, EPA continues to seek expansion of their authority. It is beyond comprehension that WOTUS will have any significant gain in water quality while expending billions of dollars of taxpayer money that could be put to better uses such as reducing the national deficit or dependence on foreign energy.

I would like to thank you again for the opportunity to testify. I am happy to take any questions.

Sincerely,

Henry Schienebeck
 Henry Schienebeck, Executive Director
 Great Lakes Timber Professionals Association

**U.S. Senate Committee on Homeland Security and Governmental Affairs
Field Hearing
“The Impact of Federal Regulations: A Case Study of Recently Proposed Rules”**

Friday, November 13, 2015

Testimony of Bruce W. Ramme, Vice President – Environmental, WEC Energy Group

Good afternoon, Chairman Johnson.

My name is Bruce Ramme and I am Vice President of Environmental for WEC Energy Group. I am a registered professional engineer, and have spent most of my career in the electric utility industry. I joined the company in 1980 as a civil engineer in the transmission engineering division. During my 35 years with the company, I have worked in a variety of power plant and power system engineering roles. I was named to my current position in 2010 and am currently responsible for environmental compliance strategy and planning, mitigation and risk management, environmental permitting of new projects, compliance assurance and identification of new and/or enhanced means of benefiting the environment through business practices at our utilities.

WEC Energy Group is one of the nation's premier energy companies with deep operational expertise, scale and financial resources to meet the region's future energy needs. We are the eighth largest natural gas distribution company in the country and one of the fifteen largest investor-owned utility systems in the United States. We are headquartered in Milwaukee and have \$29 billion of assets, 9,000 employees and 60,000 stockholders of record.

100

Our companies provide vital energy services to nearly 4.4 million customers in four states: Wisconsin, Illinois, Michigan and Minnesota. Our principal utilities are Wisconsin Electric Power Company and Wisconsin Gas Company doing business as We Energies, Wisconsin Public Service, Peoples Gas, North Shore Gas, Michigan Gas Utilities, and Minnesota Energy Resources. Of the six utilities that provide electric, gas and steam energy to our customers, two are in Wisconsin: We Energies and Wisconsin Public Service, headquartered in Milwaukee and Green Bay, respectively.

We are the largest electricity and gas provider in the state of Wisconsin, providing half the electricity and nearly 69% of the natural gas delivered to the residents of Wisconsin.

More than half of our generation comes from our eight coal plants, and more than 60% of the state's generation comes from coal. All but one of our coal plants are located in Wisconsin. Our seven Wisconsin coal plants are capable of producing over 5,000 megawatts of electricity and employ nearly 800 people.

Mr. Chairman, thank you for the opportunity to appear before you today and thank you for your leadership on this important issue. I also want to thank you for your leadership and perseverance in pursuing improvements to the federal permitting process and other regulatory reforms, and for keeping us safe here at home.

I'm going to focus my remarks today on the Clean Power Plan because of its significant impacts, but I would also be happy to respond to questions about the Waters of the U.S.

As you know, EPA issued the final rule for the regulation of greenhouse gas (GHG) emissions from existing electric generation units a little over three months ago, on August 3, 2015. Both We Energies and Wisconsin Public Service filed comments in response to EPA's proposed rule and both utilities also participated in a joint Wisconsin utilities' filing.

We were pleased that EPA appeared to respond to some of our concerns by moving the interim target from the year 2020 to 2022, by including a safety valve that will allow a unit to operate for 90 days outside the permit limit in emergencies, and by making trading a little more feasible. But, we remain very concerned about some key issues in the EPA final rule, including the amount of uncertainty that has been introduced.

No Recognition for Early Action

We are very concerned that EPA did not recognize the voluntary actions we undertook prior to 2012 which is EPA's baseline year. Nor did EPA recognize the \$12 billion we have invested since 2003 to proactively upgrade our systems and significantly improve the environmental performance of our generating units.

We Energies and Wisconsin Public Service have been leaders in reducing emissions, and we believe EPA should recognize these initiatives. As I mentioned, since 2003, we have invested more than \$12 billion in new and upgraded technology. Some of our initiatives include:

- Investing more than \$1 billion in renewable energy, including three large wind farms and a new biomass plant;
- Investing more than \$1.5 billion in state-of-the-art emission control technologies to new and existing units;
- Adding new generation, repowering an older, less efficient coal plant to a combined cycle natural gas plant, and converting a coal-fueled cogeneration facility to natural gas;
- Investing in electric and gas distribution system upgrades; and
- Investing in energy efficiency for our customers.

As a result of these early actions, the new coal-fueled units at our Oak Creek and Weston sites and the new natural gas-fueled units at our Port Washington and Wrightstown sites are among the most efficient in the country.

Over the past fifteen years, we increased our generation capacity by more than 40% while reducing emissions of SO₂, NO_x, mercury and particulate matter by more than 80%. Our CO₂ emissions also decreased to a level that is below the year 2000.

Not only are we not receiving credit for these past actions, but we are actually being penalized for the early, voluntary action. For example, states that have delayed investments in

renewables, energy efficiency, or new efficient generation are better positioned to comply with the Clean Power Plan. In other words, states that waited and took no early, voluntary action are rewarded.

2012 Is Not A Representative Baseline Year

In the final rule, EPA retained 2012 as the baseline year to calculate state-specific emission rate goals. 2012 is NOT a representative baseline year – the economy was still recovering and natural gas prices were unusually low; together, these factors resulted in a significant reduction in the use of our coal generation.

As I mentioned earlier, we were pleased that EPA provided an additional two years to meet the interim target. As a result, Wisconsin's interim 2022 target is a little less stringent. However, like the national goal, Wisconsin's *final* rate target actually increased from 34% to 41% below 2005 levels. And, Wisconsin's target is still higher than the national goal of 32% below 2005 levels.

Increased Gas Plant Operations

One of the two main components in EPA's rule is a set of guidelines to help states develop their plans for meeting the goals using a series of three “building blocks” to determine the Best System of Emission Reduction (BSER). The second Building Block calls for operating existing gas plants more often. This re-dispatch of existing gas plants is technically feasible, but

will fundamentally change the operation of our nation's energy markets from the current practice of economic dispatch to environmental dispatch. Economic dispatch is based on least cost to our customers. Moving away from economic dispatch to environmental dispatch will lead to increased costs to our customers.

Our Port Washington Generating Station is a 1,150 megawatt natural gas-fueled plant. Originally, the Port Washington plant was a 225 megawatt coal-fueled plant that had operated at that same site since the 1930s. The current Port Washington gas-fueled plants were placed in service in 2005 and 2008, and are now the most thermally efficient generating units in Wisconsin. In 2013, these very efficient units at Port Washington operated at about 35%, which is just less than half the 75% capacity factor that EPA calls for in the final Clean Power Plan. Increasing the capacity factor at Port Washington will impact natural gas supply and will increase costs for our customers.

Conclusion

EPA's greenhouse gas rule is complex and far-reaching, and will significantly change the electric utility industry. There is a great deal of uncertainty in terms of what states can do, how interstate trading will work, how certain renewables like biomass will be treated, how the renewable incentives will work, how new combined cycle natural gas plants will be treated, and how the reliability safety valve will work.

One thing is certain ... costs will increase for our customers.

As you know, we build things in Wisconsin. Wisconsin has a large manufacturing base and many of those industries and companies rely on electricity to help them manufacture their products. An increase in their electricity costs could have an impact on their competitiveness not just in the U.S. but abroad as well.

Unfortunately, I do not have current cost estimates to provide to the Committee at this time. We, along with the other utilities in the state are modeling our systems and have contracted with the Electric Power Research Institute (EPRI) to model the Clean Power Plan and its impact on Wisconsin utilities and our customers; preliminary results should be available next year. EPRI is an independent, nonprofit organization that conducts research, development and demonstration relating to the generation, delivery and use of electricity for the benefit of the public. EPRI brings together scientists and engineers as well as experts from academia and the industry to help address challenges in electricity.

Mr. Chairman, thank you again for the opportunity to testify before the Committee and for your leadership on this important issue.

I am happy to respond to any questions you may have.



Wisconsin Wildlife Federation

Testimony Before the US Senate Homeland Security and Governmental Affairs Committee Regarding the USEPA Waters of the United States Rule and the Clean Power Plan Rule

Chairman Johnson, thank you for the opportunity for the Wisconsin Wildlife Federation to testify before the US Senate Homeland Security and Governmental Affairs Committee on the USEPA Waters of the United States Rule and the Clean Power Rule.

Before I address those rules however, the Federation would like to thank you personally for your support for the delisting of the gray wolf in Wisconsin, your support for the State Wildlife Grant Program and your willingness to oppose the sale of federal lands in this country.

The Wisconsin Wildlife Federation was formed in 1949 and is comprised of 195 hunting, fishing, trapping and forestry related organizations in the state of Wisconsin. The Federation has a dual Mission including the support of conservation education and the advancement of strong conservation policies on a state and federal level. On a more specific level, the Federation works on policy issues related to protection of fish and wildlife and their habitat, the provision of public access for hunting, fishing and trapping, support of the Second Amendment and the shooting sports, supporting adequate conservation funding and the promotion of conservation education. The Wisconsin Wildlife Federation is a state affiliate of the National Wildlife Federation.

Waters of the United States Rule

Sportsmen and Women Strongly Support the USEPA Waters of the United States Rule

The Wisconsin Wildlife Federation is a very strong supporter of the USEPA Waters of the United States Rule. The wetlands and small waterways protected by this rule provide the vital habitat that is so critical for the fish and wildlife that forms the basis for our members to hunt, fish and trap in Wisconsin and throughout the fifty states of this country. Our one hundred and ninety-five hunting, fishing and trapping groups in this state are not alone in this support. The Waters of the United States Rule has been supported by the major sporting organizations across the United States including Ducks Unlimited, Trout Unlimited, Pheasants Forever, the Izaak Walton League along with scores of other hunting, fishing and trapping organizations.

Without the protection of this vital habitat, there will be a reduction in fish and wildlife populations and a significant decline in the economic benefit to the economies of the various states and the nation. **Don't be mistaken, hunting, fishing and trapping is big business** that should be considered by policy makers and business trade organizations that opposed the rule.

Each year 40 million Americans hunt, fish and trap in the United States. Retail sales from these activities total \$86 billion with a total economic impact of \$201.4 billion supporting 1.5 million jobs. In Wisconsin sportsmen and women pay almost \$100 million just in hunting, fishing and trapping license and stamp fees and contribute voluntarily in excess of another \$50 million for conservation purposes. The U.S. Fish and Wildlife Service reports that in 2011, \$5.5 billion was spent on wildlife recreation in Wisconsin, including \$1.4 billion on fishing, and more than 3.5 million people participated in these recreation activities throughout the state. The wetlands and small bodies of water protected by the USEPA Waters of the United States Rule are as critical a part of the economic infrastructure of this state as highway, schools and forests.

The USEPA Waters of the United States Rule Does Not Place Any Significant Regulatory Burden on Wisconsin Citizens

Wisconsin is truly unique when it comes to the regulatory requirements of the Waters of the United States rule. Wisconsin already regulates the same waters and activities as does the new Waters of the United States rule. Wisconsin adopted the equivalent of the rule in 2001. The new Waters of the United States rule was the law of the land until the US Supreme Court limited the jurisdiction of the Clean Water Act in the SWANKE case. Wisconsin was greatly concerned by the loss of the protection of these wetlands and was prepared to act in anticipation of the US Supreme Court ruling against the EPA. Within 90 days Wisconsin adopted a state law placing the same regulations on the newly federal exempt wetlands and that law remains in effect today. This 2001 law was strongly supported by the great majority of the citizens of Wisconsin and was passed by a Republican Senate, a Democratic Assembly and signed into law by a Republican Governor. **Therefore the USEPA Waters of the United States Rule does not place any significant regulatory burden on Wisconsin business, agriculture, utilities and forestry.** And any duplication of regulation can be prevented, as historically been done by the Wisconsin DNR and the Corps of Engineers by entering into Memorandum of Agreements and the issuance of Federal General Permits. These cooperative tools have been used for over 25 years in this state to prevent the duplication of regulation and surely can be utilized to prevent any such duplication with the new Waters of the United States Rule.

Given Wisconsin Waters Protection, why do Wisconsin sportsmen and women so strongly support the Federal USEPA Waters of the United States rule.

The members of the Wisconsin Wildlife Federation and the other sports groups supporting the Federal Waters of the United States rule have been very active in supporting the rule because our members hunt, fish and trap across all of the states and quality fish and wildlife habitat is vital for fish and wildlife populations in this states also. In addition, many of the species that we hunt and fish are migratory in nature and rely on quality wetlands and waters in neighboring states and flyways. A federal rule is necessary to protect that habitat for the benefit of all hunters, anglers and trappers in this country regardless of their permanent residence. Another important reason for a Federal regulatory program to protect the water resources protected by the Waters of the United States rule is the remote possibility that future Wisconsin policymakers might be short-sighted and ignore the support of the people for state protection of those resources and pass a law rescinding the current state regulatory framework.

Clean Power Rule

Wisconsin Cost Estimates to Implement Clean Power Rule Are Greatly Overstated

The Public Service Commission and the Department of Natural Resources have estimated that the cost of implementing the Clean Power Rule in Wisconsin is between \$4 billion and \$13 billion. The Wisconsin Wildlife Federation believes that estimate to be greatly overstated. In my forty-five year involvement in implementing new state and federal environmental regulatory programs, I have found consistently that the initial cost estimates for implementing such programs developed by those opposed to the programs have been over inflated by a factor of five to ten times.

The following are some factors which will lead to far smaller cost estimates to implement the Clean Power Rule in Wisconsin:

1. The high end of the PSC analysis range is the result of an arbitrary increase in gas prices above the Energy Information Administration forecast as well as an early closure of the Point Beach nuclear plant. An early closure of that plant is highly, highly unlikely.
2. The entire range of costs is artificially inflated because the PSC assumed that Wisconsin would use only renewable generation in Wisconsin to comply. This clearly will not be the case as Wisconsin utilities have historically used out-of-state renewable generation to comply with the Wisconsin Renewable Portfolio Standard requirements

3. The analysis is further flawed by assuming there will be no emission trading with other states and utilities. The final Clean Power Rule makes it abundantly obvious that EPA expects utilities to trade credits with utilities in other states and has made it very easy for states to write implementation plans that allow their utilities to do so.
4. The analysis only looked at the costs of the Clean Power Rule compliance and completely ignored the positive impacts that energy efficiency investments are bound to have on energy bills – the Public Service Commission completely ignored the cost benefits of the rule including health benefits.

The Use of 2012 as a Baseline for the Clean Power Rule Reductions

1. If EPA had used a 2005 baseline, but made the target more aggressive to ensure a similar environmental outcome (stringency), half of the utilities in the nation would be complaining more than they are now (the half that didn't do as much); and that would include some Wisconsin utilities.
2. With that in mind, you can recognize and reward early action in setting the target AND/OR in your compliance plan, and it will be more meaningful (for the reason stated in #1) to do so in the compliance plan. The point is that states still have the flexibility to reward early action. They can take a mass-based approach and give more allowances to utilities that invested more in renewable energy between 2005 and 2012, and less to those that didn't. That would truly reward those who took early action (unlike using a 2005 baseline to set the target but making the reductions required greater to achieve the same reductions between now and 2030).
3. Utilities are receiving the benefit of their investments in clean energy between 2005 and 2012 because if you invested a lot in clean energy then you have built fewer fossil fuel plants and your target is easier to reach because you have fewer regulated facilities that have to make reductions.

The Wisconsin Wildlife Federation thanks Senator Johnson and the Homeland Security and Governmental Affairs Committee for this opportunity to testify in support of the USEPA Waters of the United States and the Clean Power Rule.

Submitted by George Meyer, Executive Director, Wisconsin Wildlife Federation---November 12, 2015

TESTIMONY OF THE ENVIRONMENTAL PROTECTION AGENCY

Homeland Security and Government Affairs, Wisconsin Field Hearing
"The Impact of Federal Regulations: A Case Study of Recently Proposed Rules"
November 13, 2015

Chairman Johnson, Ranking Member Carper, and Members of the Committee, thank you for providing the Environmental Protection Agency with the opportunity to submit testimony on our regulatory efforts. The mission of EPA is protection of public health and the environment, and the Agency's regulatory efforts are in furtherance of those goals. We are guided in meeting those goals by science and by the law which serve as the backbone for each of the Agency's actions. Our testimony will, therefore, focus on providing more detail for two rules which will provide tremendous benefits to the public health and the environment.

Clean Water Rule

Approximately 117 million Americans – one in three people - get their drinking water from streams fed by waters that lacked clear protection and about 33 million Americans fish, swim and boat in waters that were vulnerable to pollution. The agency along with the Department of the Army promulgated the final Clean Water Rule to help protect these waters which are vital to our health and economy.

The purpose of the Clean Water Rule is simple: provide clarity on which waters are, and are not, covered by the CWA so covered waters can be protected from pollution and destruction.

The rule provides clearer definitions to establish waters that are jurisdictional by rule and limit the need for case-specific analysis. It makes clear that the rule applies only with respect to discharges of pollutants to the covered water; you don't need a permit if you don't discharge pollutants in a covered water.

Normal farming, forestry, and ranching have long been exempt from Clean Water Act regulation covering dredged or filled material, and the Clean Water Rule doesn't change that. The final rule specifically recognizes the vital role that agriculture serves in providing food, fuel, and fiber for the United States and the world. This rule not only maintains current statutory exemptions for normal agricultural activities, it expands regulatory exclusions to make it clear the rule does not add any additional permitting requirements on agriculture.

Specific agricultural permit exemptions include discharges from: normal farming, forestry, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or

upland soil and water conservation practices; agricultural stormwater discharges; return flows from irrigated agriculture; construction and maintenance of farm or stock ponds or irrigation ditches; maintenance of drainage ditches; and construction or maintenance of farm, forest, and temporary mining roads.

The rule also includes common sense exclusions from jurisdiction, such as: prior converted croplands; waste treatment systems (including treatment ponds or lagoons); artificially irrigated areas that would revert to dry land; artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds; water-filled depressions created in dry land as a result of mining or construction activity, including pits excavated for obtaining fill, sand, or gravel; and grassed waterways and non-wetland swales.

In addition to the Clean Water Rule, the Agency has completed a significant air pollution rule.

Clean Power Plan

On August 3, 2015, President Obama and EPA Administrator Gina McCarthy announced the final Clean Power Plan – an historic and important step in reducing carbon pollution from power plants that takes concrete action to address climate change – as well as final standards limiting carbon pollution from

new, modified, and reconstructed power plants and a proposal for a Federal Plan and Model Rules that demonstrate clear options for how states can implement the Clean Power Plan in ways that maximize flexibility for power plants in achieving their carbon pollution obligations.

Shaped by a process of unprecedented outreach and public engagement that is still ongoing, the final Clean Power Plan is fair, flexible and designed to strengthen the fast-growing trend toward cleaner and lower-polluting American energy. It sets strong but achievable standards for power plants, and reasonable goals for states to meet in cutting the carbon pollution that is driving climate change, tailored to their specific mix of sources. It also shows the world that the United States is committed to leading global efforts to address climate change.

The final Clean Power Plan mirrors the way electricity already moves across the grid. It sets standards that are fair, and consistent across the country - and that are based on what states and utilities are already doing to reduce CO₂ from power plants. And it gives states and utilities the time and broad range of options they need to adopt strategies that work for them.

These features of the final rule, along with tools like interstate trading and emissions averaging, mean states and power plants can achieve the standards while maintaining an ample and reliable electricity supply and keeping power affordable.

When the Clean Power Plan is fully in place in 2030, carbon pollution from the power sector will be 32 percent below 2005 levels.

As previously noted, we received substantial input on the proposed Clean Power Plan, and the final rule reflects and responds to that input. We received detailed and constructive comments from numerous stakeholders in Wisconsin, who relayed information and concerns specific to the state, and we appreciate that input.

States and utilities told us they needed more time than the proposal gave them—and we responded. In the final rule, the compliance period does not kick in until 2022, the interim reductions are more gradual, states can determine their own compliance path, and any state can get up to three years to submit a state plan.

We heard the concerns about reliability. We listened and we consulted with the planning and reliability authorities, FERC and the Department of Energy. The final Clean Power Plan reflects this input and it includes several elements to assure that the plan requirements would not compromise system reliability.

In addition, to provide an extra incentive for states to move forward with planned investments, we're creating a Clean Energy Incentive Program that will recognize early progress.

Since issuing the final Clean Power Plan, EPA has continued to engage with states, territories, tribes, industry groups, community organizations, health and environmental groups, among others.

The final Clean Power Plan reinforces the progress Wisconsin is already making on clean energy, spurring additional investment in resources including wind, solar, and biomass, as well as in energy efficiency in homes and businesses. These technologies are growing quickly, and Wisconsin has the potential to reap significant economic gains and job growth, not to mention increased public health protections and a cleaner environment. For example, at the national level, the solar industry is adding jobs 10 times faster than the rest of the economy, with one job added every 20 minutes. Similarly, by supporting new investments in efficiency, the Clean Power Plan can help homeowners and businesses across Wisconsin save on their electricity bills. Overall, the Clean Power Plan can help Wisconsin accelerate and broaden the trend towards cleaner energy already underway.

We are convinced by both our analyses and our experiences that the carbon pollution reductions called for under the Clean Power Plan will continue the trajectory of the last 40 years when we've cut air pollution 70 percent while our economy has tripled.

Again, the Agency thanks the Committee for the opportunity to provide this testimony, highlighting the Agency's efforts to use the best available science to implement our nation's environmental laws to protect public health and the environment.



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November 12, 2015

Chairman Senator Ron Johnson
U.S. Senate Committee on Homeland Security & Governmental Affairs

Dear Chairman Johnson,

I appreciate the opportunity to share with the committee members of the Senate Homeland Security & Governmental Affairs Committee what it means to be an electric cooperative and why we are concerned with the flow of onerous, overlapping regulations stemming from the Environmental Protection Agency (EPA) that undermine the efforts of electric cooperatives in Wisconsin and throughout the nation to provide safe, affordable and reliable electricity to our member consumers.

My name is Steve Freese, and I am the Manager of the Wisconsin Electric Cooperative Association and Cooperative Network Vice President. As a leader in the electric cooperative movement, my job is to serve and uphold the interest of every one of our 589,133 member consumers and the 25 not-for-profit cooperatives that they collectively own. It is the focus on the member. . .the consumer at the end of the line. . .that sets electric cooperatives apart. Throughout our rich history electric cooperatives have risen to the challenges of their day. This proud tradition has carried us forward to rise to the challenges of the present day including the integration of renewables and distributed generation resources, hiring, training and maintaining a skilled workforce and promoting a culture of safety. Of course, a significant challenge is the ever increasing onslaught of federal regulations including overly expansive environmental regulatory requirements.

I began working for the Wisconsin Statewide in July of this year, and as I have settled into my new role, I quickly learned that I had no time to settle in. I was on the job just a little over a month when President Obama and the EPA announced their “Clean Power Plan,” a sweeping federal regulation to reduce carbon dioxide emissions from power plants that will drastically change the way that electricity is generated in our state and throughout the nation. Under this rule, the U.S. electric

power sector must reduce overall carbon dioxide emissions by 32 percent by 2030. Without question, this regulation will have significant implications for the delivery of safe, reliable and affordable electricity.

The National Rural Electric Cooperative Association (NRECA) estimated that the proposed Clean Power Plan would have raised cooperative consumers' electric rates on average more than 10 percent by 2020 and more than 17 percent by 2025. NRECA is in the midst of a new economic analysis of the final plan, the results of which we will be sure to share once the analysis is complete. Rural Wisconsin will be hit especially hard by rising rates and I fear it will exacerbate the growing economic gap between rural and urban areas – especially in areas served by electric cooperatives where household income is 12 percent below the national average.

The Clean Power Plan will significantly reduce or effectively end the use of coal as a generation resource in the near future. Electric cooperatives have made great strides in the use of renewable energy resources in recent years, with over 12 percent of the energy generated by our member generation and transmission (G&T) cooperative, Dairyland Power, coming from renewables. Moreover, Dairyland has already surpassed Wisconsin state mandates for renewables by almost 25 percent and has more distributed generation in the Badger State than all other utilities, despite serving only 11 percent of the people. Even so, our generation system has historically been reliant on coal to meet the growing needs of our membership. The reason for this is straightforward: coal is a plentiful and affordable domestic fuel resource.

However, this reliance on coal was not purely for economic reasons; it was also in accordance with governmental regulatory policy. In the late 1970s, industry was directed to use coal out of concern over limited natural gas supplies. Pursuant to the Power Plant and Industrial Fuel Act of 1978, federal policy drove electric cooperatives to coal as the only viable resource in the midst of a major power plant building cycle. As a result, we continue to rely heavily on coal for low cost, reliable power from facilities that were built during this era. In recent years, our members have made substantial investments in our coal fleet to reduce air emissions in compliance with existing regulations to address conventional pollutants. These investments now are potentially significant stranded costs going forward.

For electric cooperatives, the Clean Power Plan will likely result in a major and expensive transition to other generation resources while simultaneously paying the

debt associated with recently installed pollution control equipment. EPA acknowledges that the Clean Power Plan will cause some cooperative owned power plants to shut down. The forced closure of coal-fired power plants still paying loans for construction or upgrades means cooperative member owners will pay twice for their electricity: once for the shuttered plant and again for the power to replace the stranded asset.

This summer, the Supreme Court remanded EPA's mercury rule on the grounds the Agency failed to properly account for costs. Without a stay from the courts, utilities spent billions of dollars, permanently retired power plants and made other irreversible actions prior to the Supreme Court's decision to remand the rule. This serves as a fresh reminder as energy consumers, producers and dozens of state governments ask to hit the "pause" button on compliance with the Clean Power Plan until the courts have taken the time to fully examine this complex proposal. In addition to our efforts to secure a stay in the Courts, we support efforts on Capitol Hill to impose a "legislative stay" on the Clean Power Plan pending final judicial review of the regulation.

Thank you for convening this important hearing and for inviting me to offer my perspectives for the committee's consideration.

Sincerely Yours,



Stephen J. Freese
Wisconsin Electric Cooperative Association Manager &
Cooperative Network Vice President